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South Carolina General Assembly



Legislative Audit Council

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The State of South Carolina
General Assembly
Legislative Audit Council
Sunset Review of:
Manufactured Housing Board
Real Estate Commission
Licensing Board for Contractors
Residential Home Builders Commission
Board of Certification of
Environmental Systems Operators
Board of Registration for Professional
Engineers and Land Surveyors
June 30, 1988

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF:

MANUFACTURED HOUSING BOARD

REAL ESTATE COMMISSION

LICENSING BOARD FOR CONTRACTORS

RESIDENTIAL HOME BUILDERS COMMISSION

BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

TABLE OF CONTENTS

	<u>Page</u>
<u>REPORT SUMMARY</u>	1
<u>MANUFACTURED HOUSING BOARD</u>	3
<u>REAL ESTATE COMMISSION</u>	47
<u>LICENSING BOARD FOR CONTRACTORS</u>	85
<u>RESIDENTIAL HOME BUILDERS COMMISSION</u>	121
<u>BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS</u> ...	139
<u>BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS</u>	162

REPORT SUMMARY

Introduction

In 1978, the General Assembly passed Act 608, the "Sunset Act" (§1-20-10 et seq. of the South Carolina Code of Laws, as amended). This Act abolishes specific boards and commissions on predetermined dates unless these agencies demonstrate a public need to justify their continued existence. In passing the law, the Legislature's greatest concern was whether the regulation provided by these agencies was needed to protect the public interest and, if so, how well the boards and commissions were performing this function.

The Sunset Act requires the Legislative Audit Council to evaluate the performance of the agencies scheduled for termination. This report contains the reviews of six boards scheduled to terminate on June 30, 1989:

Manufactured Housing Board

Real Estate Commission

Licensing Board for Contractors

Residential Home Builders Commission

Board of Certification of Environmental
Systems Operators

Board of Registration for Professional
Engineers and Land Surveyors

The Public Service Commission, also scheduled to terminate on June 30, 1989, is reviewed in a separate report.

The Act requires that the Audit Council, at a minimum, address the following eight issues:

- (1) The amount of the increase or reduction of costs of goods and services caused by the administering of the programs or functions of the agency under review;
- (2) The economic, fiscal and other impacts that would occur in the absence of the administering of the programs or functions of the agency under review;

- (3) The overall cost, including manpower, of the agency under review;
- (4) The efficiency of the administration of the programs or functions of the agency under review;
- (5) The extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates;
- (6) The extent to which the agency duplicates the services, functions and programs administered by any other state, federal, or other agency or entity;
- (7) The efficiency with which formal complaints, filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review, have been processed; and,
- (8) The extent to which the agency under review has complied with all applicable state, federal and local statutes and regulations.

Review of the boards' regulatory functions and duties indicates that five of the boards fulfill a public need and meet the Sunset Act's criteria to justify their continued existence. The Audit Council, therefore, recommends that the General Assembly reauthorize these boards. However, the Council recommends that the Manufactured Housing Board be discontinued and that regulation of manufactured homes be conducted only by the Manufactured Housing Section of the Division of General Services.

This report is the first step in the Sunset process. The Audit Council asked the boards to respond in writing to their audit reports and their comments are found in the appendix of each audit. In addition, each agency may testify in public hearings held by the State Reorganization Commission. Following this process, the General Assembly will decide whether to reauthorize these boards.

MANUFACTURED HOUSING BOARD

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	5
<u>BACKGROUND AND ORGANIZATION</u>	6
<u>SUNSET ISSUES AND FINDINGS</u>	8
(1) EFFECTS OF REGULATION.....	8
(2) IMPACTS OF DEREGULATION.....	9
Delay of Hearings.....	9
Use of a Hearing Examiner.....	10
Other States.....	11
Licensure of Salesmen and Manufacturer Representatives	12
(3) ADMINISTRATIVE COSTS.....	15
Revenues Not Sufficient to Cover Costs.....	16
(4) EFFICIENCY OF ADMINISTRATION.....	17
Fines.....	18
Surety Bond for Dealers and Manufacturers.....	20
Surety Bond for Salesmen and Manufacturer	
Representatives.....	21
Appeals.....	22
(5) PUBLIC PARTICIPATION.....	23
(6) DUPLICATION OF SERVICES.....	25
(7) HANDLING OF COMPLAINTS.....	25
HUD Standards.....	26
Manufactured Housing Set-Up Legislation Needed.....	27
Outstanding Complaints.....	29
(8) COMPLIANCE WITH THE LAW.....	30
Board Membership.....	30
Potential Conflicts of Interest.....	31
Compliance With the Administrative Procedures Act.....	33
<u>APPENDICES</u>	34
A - Agency Comments.....	35
B - Agency Comments Addressing Outstanding Complaints.....	44

INTRODUCTION

After reviewing the laws and operations of the South Carolina Manufactured Housing Board, the Audit Council concludes that the Board should be discontinued. The Board does not administer a test or require any formal training of persons applying for a manufactured housing license. Further, several Board practices impede the resolution of complaints. Five of seven southeastern states do not have regulatory boards, but rely on state agencies to enforce manufactured housing standards. The Board could serve as an advisory board to the Manufactured Housing Section of the Division of General Services.

The Manufactured Housing Section is needed and should be continued in order to protect public safety and welfare. The Manufactured Housing Section is already responsible for enforcing Federal Manufactured Housing regulations and provides other consumer services that do not require the Board's oversight. The Manufactured Housing Section's regulation of the industry would allow existing General Services staff to more efficiently and effectively administer and enforce manufactured housing standards and regulations without an additional level of oversight.

BACKGROUND AND ORGANIZATION

Act 341 of 1973 created the South Carolina Manufactured Housing Board. The employment of staff to carry out the Board's responsibilities was authorized by Act 1088 of 1974.

The Board is composed of seven members which by law include one manufacturer, one salesman and one dealer of the manufactured housing industry, a full-time employee of a fire department, one person each from the banking and fire insurance industries, and a member of the general public. All members are appointed by the Governor and serve four-year terms. The State Fire Marshal, a voting, ex officio Board member, acts as a consultant to the Board.

Section 31-17-90 of the South Carolina Code of Laws authorizes the Budget and Control Board's Division of General Services to hire and supervise Board staff. To fulfill this requirement, General Services created the Manufactured Housing Section. The Manufactured Housing Section is one of five regulatory entities within the Department of Building Codes and Regulatory Services.

The Manufactured Housing Section is responsible for verifying compliance with federal and state laws and regulations which govern the manufactured housing industry. The United States Department of Housing and Urban Development (HUD) has designated the Manufactured Housing Section as the State Administrative Agency (SAA) to administer and enforce federal manufactured housing standards. The Section has a written agreement with HUD. As such, the Section investigates and, if necessary, inspects new homes purchased by consumers who file written complaints. Also, the Manufactured Housing Section monitors and inspects homes on dealer lots. Inspections are to provide protection from unsafe housing and to ensure conformance with federal manufactured housing standards.

The Manufactured Housing Section's enforcement of state laws includes, but is not limited to, investigating complaints

involving monetary or contractual disputes; issuing licenses to individuals and businesses who sell or offer to sell manufactured homes; and conducting hearings of persons found selling manufactured homes without a license.

The Manufactured Housing Board, like the Manufactured Housing Section, resolves complaints. However, the Board's involvement in the complaint process begins when a Section inspector requests the Board to hold an administrative hearing for complaint resolution. In addition, the Board serves as a first-level appellate body for the Section's and the Board's decisions or orders. Furthermore, the Board is empowered to deny, revoke, or suspend a license when an applicant or a licensee has been involved in improper manufactured housing deals or has made a false statement on the license application. The Board cannot promulgate regulations without the approval of the Budget and Control Board.

SUNSET ISSUES AND FINDINGS

(1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Manufactured Housing Board has no direct control over the prices charged by manufactured housing dealers or manufacturers. The Board may pass on the costs of regulation to consumers through license and registration fees (see Table 1). In addition, the United States Department of Housing and Urban Development (HUD) pays South Carolina \$12 per home shipped into the state. In return, the Manufactured Housing Section of the Division of General Services enforces federal manufactured home standards. It is not likely that these costs significantly affect the price of manufactured homes.

TABLE 1

SOUTH CAROLINA MANUFACTURED HOUSING BOARD

SCHEDULE OF FEES

	<u>Fees</u> ¹
Manufacturers	\$25
Dealers	25
Manufacturer Representatives	20
Salesmen	10

¹The fee for the first year and renewal license(s) are the same.

Source: FY 86-87 South Carolina Annual Report
on Occupational and Professional
Licensing Boards.

(2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The primary functions of the Manufactured Housing Section of the Division of General Services are to enforce HUD manufactured home standards and resolve consumer complaints involving sales transactions. Without the Manufactured Housing Section, manufactured home owners would have less assurance that life-threatening deficiencies are corrected. Also, there would be no recourse, except the courts, to resolve contractual and monetary disputes between consumers and dealers.

The Manufactured Housing Board, however, should be discontinued. The Board provides no additional functions or services which are not already provided or could be provided by the Manufactured Housing Section. In addition, the Board, unlike most regulatory boards, does not require applicants to possess any special expertise or pass an examination. Further, the Board cannot promulgate regulations without the approval of the Budget and Control Board.

Delay of Hearings

The Board's main function is to hear appeals and resolve complaints through the administrative hearing process. These functions could be handled more effectively and efficiently by the Manufactured Housing Section without Board involvement. For example, in March 1987 an inspector of the Section conducted an on-site investigation of a complaint involving a possible defect in the installation of a gas furnace. In June 1987, the inspector requested a Board hearing on this case. The Board did not hold the hearing until October 1987. The Board then ordered the manufacturer to inspect the furnace and the dealer to repair the furnace and pay repair costs. The manufacturer's inspection was conducted in November 1987 and seven deficiencies including the improper installation of the gas line were found. The

official making the inspection recommended that the furnace be removed and reinstalled. In December 1987, the dealer made the repairs. However, this case which presented a possible "imminent safety hazard" to the consumer was heard approximately four months and resolved approximately six months after a hearing was requested.

According to the State Administrative Agency (SAA) Guidebook, the SAA is to refer cases which may present an imminent safety hazard or serious defect to HUD. This guidebook cites an improperly connected furnace as a potential imminent safety hazard.

Further, a Board policy requires that an imminent safety hazard be corrected within four days of the HUD inspection. Nevertheless, problems with the furnace were not resolved until nine months (March 1987 to December 1987) after the initial inspection.

According to agency staff, it is difficult to schedule hearings in a timely manner since the Board meets only once a month and holds five to six hearings per meeting (including administrative and license review/nonlicense hearings). As a result, administrative cases which need to be resolved in a timely manner must be scheduled for the following month(s). Thus, consumers are not always promptly protected from serious housing deficiencies. In addition, when an inspector has to attend an administrative hearing on a day other than his weekly office day, he has less time to spend in the field to monitor compliance. This further delays the handling and resolution of complaints. Also, the flexibility to schedule hearings at the convenience of the consumer, applicable manufacturer or dealer is restricted when administrative hearings are held one day a month.

Use of a Hearing Examiner

Between October 1981 and December 1985, either an attorney of the South Carolina Attorney General's Office or the Director of Building Codes and Regulatory Services served as the hearing

examiner for administrative cases, subject to final approval by the Board. In January 1986, the Executive Committee (officers) of the Board began conducting hearings. Then in February 1987, the process was changed to include the full Board.

An agency official stated that when the hearing examiner conducted hearings, many complaints were resolved before the Board's approval of the examiner's recommendations. In addition, this official stated that when the hearing examiner was used, hearings were held one week a month (when the appropriate compliance inspector was scheduled to be in the office) rather than during the monthly Board meeting.

If a hearing examiner were appointed from the Manufactured Housing Section, administrative hearings could be held weekly rather than monthly. Thus, complaints could be resolved in a more timely manner. Further, hearings could be conducted at the convenience of the complainant and when the applicable inspector is scheduled to be in the office.

A hearing examiner within the Manufactured Housing Section currently conducts hearings involving persons who sell homes without a license. An agency employee estimated that these cases are resolved within two days of the hearing.

According to the Manufactured Housing Section's staff, the responsibility to hold administrative hearings was taken from the Manufactured Housing Section because there was no statutory authority permitting staff to hear such cases.

Other States

Five of seven southeastern states (Florida, Georgia, Mississippi, Tennessee, and Virginia) do not have a manufactured housing board. In Florida and Georgia, hearings are conducted by a hearing officer with final approval by the appropriate agency head. In Mississippi, Tennessee and Virginia, hearings are held by the agency head or his designee. Appeals in the five states are heard in the courts (see p. 22).

RECOMMENDATIONS

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER TERMINATING THE RESPONSIBILITIES OF THE MANUFACTURED HOUSING BOARD SINCE THE BOARD DUPLICATES MANY OF THE FUNCTIONS OF THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES. THE BOARD'S RESPONSIBILITIES SHOULD BE CARRIED ON BY THE MANUFACTURED HOUSING SECTION OF THE DIVISION OF GENERAL SERVICES.

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER MAKING THE BOARD AN ADVISORY BOARD TO THE MANUFACTURED HOUSING SECTION.

THE DIVISION OF GENERAL SERVICES' DIRECTOR OF BUILDING CODES AND REGULATORY SERVICES SHOULD ASSIGN AN EMPLOYEE OF THE MANUFACTURED HOUSING SECTION TO ACT AS THE HEARING EXAMINER FOR ADMINISTRATIVE HEARINGS. THE EXAMINER'S RECOMMENDATIONS SHOULD BE FORWARDED TO THE DIRECTOR FOR FINAL APPROVAL.

IF THE BOARD IS TERMINATED, THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §31-17-120 OF THE SOUTH CAROLINA CODE OF LAWS TO REQUIRE THAT APPEALS BE HEARD BY THE COURTS.

Licensure of Salesmen and Manufacturer Representatives

State laws requiring salesmen and manufacturer representatives to be licensed are unnecessary and do not provide additional protection to the public. Statutes requiring these individuals to be bonded protect the public from unscrupulous financial dealings.

Currently, state law requires individual licensees to furnish their own bonds. A more efficient process to protect consumers would be to require dealers and manufacturers to be

responsible for ensuring that their employees are properly bonded.

The licensure of these persons has resulted in an administrative burden for the Manufactured Housing Section's staff and an unwarranted expense for these licensees. Licensure is unnecessary because the Board does not measure the competency of applicants. In addition, the Board cannot deny a license unless an applicant has been involved in improper manufactured housing deals or has made false statements on the license application. However, individuals with questionable backgrounds in mobile home sales have been licensed. For example, a license was approved for a salesmen applicant who was convicted of a crime involving manufactured housing sales. The license was granted less than a year after this individual was convicted.

Section 31-17-110 of the South Carolina Code of Laws requires that all manufactured housing licensees furnish a bond. This statute states:

The bond shall provide against any misappropriation of funds belonging to the purchaser, any alteration on the part of the salesmen to deceive the purchaser as to the manufacture or construction of the product or any false or fraudulent representations or deceitful practices in selling or representing a product and any failure to fulfill warranty obligations

There are several effects of licensing salesmen and representatives. In each of the past three fiscal years, approximately two-thirds (an average of 1,200) of the manufactured housing licensees were salesmen or manufacturer representatives. State law stipulates that all manufactured housing licenses expire on June 30 of each year. A Manufactured Housing Section employee stated that due to the number of licensees, the licensing renewal period has been extended through September of each year rather than through June. As a result, licenses have not been renewed in accordance with state law. Additionally, to complete the renewal process by September, temporary help and an agency employee not assigned to licensing have been used. Also, in FY 86-87, the Board's administrative

costs to license salesmen and manufacturer representatives were \$10,522 while licensing fees accounted for \$9,850.

Five of seven southeastern states (Alabama, Florida, Georgia, Mississippi, and Tennessee) do not license salesmen or manufacturer representatives. Virginia licenses both groups while North Carolina licenses salesmen.

According to Board staff, salesmen are licensed to protect the public from unethical practices, such as the taking of down payments from customers with no intention of submitting them to their employers. However, as noted earlier, the public is protected against such acts since salesmen must be bonded. In the past three fiscal years, three claims have been filed against salesmen's bonds and none against manufacturer representatives.

RECOMMENDATIONS

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER ELIMINATING THE MANDATORY LICENSING OF SALESMEN AND MANUFACTURER REPRESENTATIVES AS REQUIRED IN §31-17-100 OF THE SOUTH CAROLINA CODE OF LAWS.

IF LICENSING IS CONTINUED, FEES SHOULD BE INCREASED TO COVER THE EXPENSES OF THIS PROCESS.

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER REQUIRING DEALERS AND MANUFACTURERS TO BE RESPONSIBLE FOR ENSURING THAT THEIR SALESMEN AND MANUFACTURER REPRESENTATIVES ARE BONDED FOR THE AMOUNTS REQUIRED BY LAW.

IF LICENSING IS DISCONTINUED, THE GENERAL ASSEMBLY MAY WISH TO CONSIDER ENACTING LEGISLATION TO ALLOW THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES TO IMPOSE PENALTIES UPON DEALERS AND MANUFACTURERS EMPLOYING SALESMEN OR MANUFACTURER REPRESENTATIVES WHO ARE NOT PROPERLY BONDED.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Manufactured Housing Board and the Manufactured Housing Section collect revenues from licensing fees, fines, and HUD fees for homes shipped into the state. HUD pays the state \$12 for each home shipped. In the past five fiscal years, an average of 76% of the Board's operating expenses have been covered by fees collected from HUD.

As noted earlier, the Manufactured Housing Section's staff is employed by the Division of General Services to carry out the Board's responsibilities. The Manufactured Housing Section is one of five regulatory entities within General Services' Department of Building Codes and Regulatory Services. The Manufactured Housing Section of General Services has 11 full-time employees which include 1 supervisor, 1 complaint analyst, 7 inspectors, and 2 clerks. In addition, four persons employed by the Department assist the Section with such activities as filing bond claims and preparing materials for hearings. Two Department officials estimated that each of these persons spends an average of 50% of their time performing manufactured housing activities. Further, the Director of Building Codes and Regulatory Services estimated that she spends about 45% of her time performing manufactured housing duties.

From FY 82-83 to FY 86-87, approximately 56% of the Board's operating expenses were used for personal services. Approximately 53% of this amount included salaries for Manufactured Housing Section employees; the remaining amount for personal services was spent on per diem expenditures for Board members and salaries for temporary clerical help.

Travel costs have more than doubled from FY 82-83 to FY 86-87. However, the increase in these expenses is directly related to the number of inspectors employed by the Manufactured Housing Section. Inspectors travel to investigate consumer complaints and monitor dealer lots. The number of inspectors

increased from three in FY 82-83 to seven in FY 86-87. Travel costs during this period increased 51%, from \$30,429 to \$62,629.

The Manufactured Housing Section is housed within the offices of Building Codes and Regulatory Services. The Board's meetings are held within these offices.

The following problem was found with the Board's revenues and expenditures.

Revenues Not Sufficient to Cover Costs

The costs of regulating the manufactured housing industry are not covered by license and regulatory fees, and other revenues generated. As a result, taxpayers are subsidizing the costs of regulating this industry. As Table 2 indicates, HUD fees and licensing fees were sufficient to pay expenses until FY 85-86. In FY 85-86 and FY 86-87, expenses exceeded revenues by over \$60,000 and \$156,000, respectively.

TABLE 2

SOUTH CAROLINA MANUFACTURED HOUSING BOARD

SOURCE OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>
HUD Fees	\$136,740	\$170,124	\$169,980	\$177,816	\$149,484
License Fees	19,415	20,640	34,443	27,937	20,550
Fines	960	5,325	6,025	5,005	6,200
TOTAL Revenues	<u>\$157,115</u>	<u>\$196,089</u>	<u>\$210,448</u>	<u>\$210,758</u>	<u>\$176,234</u>
<u>Expenditures</u>					
Personal Services	\$ 72,299	\$ 87,707	\$ 96,150	\$133,279	\$187,865
Per Diem	2,800	2,380	2,380	2,380	2,450
Other Operating Expenses	13,743	30,800	29,425	81,362	79,769
Travel	30,429	37,634	50,207	55,022	62,629
TOTAL Expenditures	<u>\$119,271</u>	<u>\$158,521</u>	<u>\$178,162</u>	<u>\$272,043</u>	<u>\$332,713</u>

Sources: The South Carolina Budget and Control Board Documents, FY 84-85 through FY 88-89; FY 86-87 South Carolina Occupational and Professional Licensing Boards Annual Report; and the South Carolina Manufactured Housing Section HUD Ledger.

Section 129.41 of the FY 87-88 State Appropriation Act requires regulatory agencies to recoup their costs. This Act states:

Professional and occupational licensing agencies must generate revenues equal to 115% of their appropriation

This Proviso also allows Boards to increase fees to cover previous years' deficits.

The state could recoup the costs of regulating the industry in several ways. The options include:

- The Board's functions could be discontinued and assumed by the Manufactured Housing Section of General Services (see p. 9).
- Licensing fees for dealers and manufacturers could be increased. In South Carolina, these fees are \$25. Fees in Georgia, Alabama, Florida, Tennessee, and Virginia range from \$40 to \$200.
- The Board and the Manufactured Housing Section could discontinue arbitrarily reducing fines imposed against licensees who violate state laws (see p. 18).
- The Manufactured Housing Section could reduce staff by investigating only complaints which violate a state or federal law or regulation (see p. 26).

RECOMMENDATION

THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES SHOULD TAKE NECESSARY STEPS TO ENSURE THAT ALL COSTS OF REGULATING THE MANUFACTURED HOUSING INDUSTRY ARE SUPPORTED BY FEES, FINES, AND OTHER REVENUES.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council reviewed the operations of the Manufactured Housing Board and the Manufactured Housing Section and has noted problems which may affect their efficiency. Fines have been arbitrarily reduced by the Manufactured Housing Board

and the Manufactured Housing Section without written criteria for reductions. To protect consumers, the bond requirements for manufacturers and dealers need to be increased; the requirements for salesmen could be decreased; and the bond for manufacturer representatives could be eliminated. Further, the Board hears cases and appeals of the same cases. These problems are discussed below.

Fines

The Manufactured Housing Board and the Manufactured Housing Section have not been consistent when fining persons or businesses found to be selling manufactured homes without a license. Also, fines have been arbitrarily reduced by Board members and staff because there are no written guidelines outlining circumstances in which a fine can be reduced. Between July 1985 and December 1987, at least 19 of 63 (30%) of the fines against persons selling manufactured homes without a license were reduced.

The Audit Council interviewed three agency officials (including two of the seven compliance inspectors) concerning fining. The inspectors differed on their methods of fining. The first inspector stated that an unlicensed salesman is fined \$250 while an unlicensed dealer is fined \$250 for each home on the lot. The second inspector stated that a salesman is usually fined \$250 for each home on the lot since he is offering to sell all homes. In addition, this inspector told the Council that he fined a dealership \$300 when the fine could have been as much as \$7,000 (based on the number of homes at the location). Further, a third official stated that a salesman's fine is based on the number of homes he has sold or is showing when cited.

Compliance Assurance Inspectors of the Manufactured Housing Section cite and fine any company or individual selling homes without a license. Section 31-17-120 of the South Carolina Code of Laws provides that any person receiving a citation is subject to an administrative penalty and can appear before a hearing

examiner appointed by the Board. The examiner can impose an administrative penalty not to exceed \$250 for each violation. An appearance at a hearing may be avoided by paying the fine. Furthermore, according to the Board's procedures, dealer fines may be based on each home on the lot or each home sold.

The Council reviewed administrative penalties imposed since May 1985. The following are examples of fines set by inspectors which were reduced by the Board or hearing examiners:

- The fine of an unlicensed dealership originally set at \$1,200 was reduced to \$10. A review of this case revealed that this dealership wrote a \$1,200 check to the Board to pay the fine. The check was held by the Board from July 24, 1985 to August 5, 1985, pending a hearing. After the hearing in which the dealer testified that he thought submittal of bonding information to his bonding company permitted him to sell homes, the \$1,200 check was voided and a \$10 fine was imposed. This dealership could have been fined \$10,750 based on the number of homes on the lot.
- A salesman's fine of \$6,750 was reduced to \$100. This person was previously licensed by the Board and had sold manufactured homes for approximately three years. Board records show that Board members based this reduction on a possible misunderstanding by the bonding company about where the salesman worked. Nevertheless, this salesman, aware that he did not have a current bond or license, continued to sell homes.
- A dealership's fine was reduced from \$1,500 to \$100. Although not licensed at the time the citation was issued, the manager of this dealership had been licensed as a salesman with another company for over 11 years. According to the manager, he thought the company's home office was responsible for obtaining the dealership's license.

When the fines of persons and companies selling manufactured homes without a license are reduced, there is less incentive to comply with state law. As a result, there is less assurance that unlicensed dealers are bonded which is intended to protect consumers when companies go out of business or do not make necessary repairs.

RECOMMENDATION

THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES SHOULD ESTABLISH WRITTEN STANDARDS FOR PENALIZING PERSONS AND COMPANIES SELLING MANUFACTURED HOMES WITHOUT A LICENSE. ALSO, THE MANUFACTURED HOUSING SECTION SHOULD ESTABLISH WRITTEN GUIDELINES WHICH SPECIFY SITUATIONS IN WHICH FINES CAN BE REDUCED. THE REASON FOR ANY REDUCTION SHOULD BE JUSTIFIED IN WRITING.

Surety Bond for Dealers and Manufacturers

The bond requirements for manufactured housing dealers and manufacturers (in business for three or more years) do not adequately protect consumers. These licensees are, respectively, required to post a \$10,000 or \$25,000 bond. However, when dealers and manufacturers have gone out of business, the bonds have not been sufficient to pay all claims filed.

Examples of bonds depleted prior to resolution of all claims are as follows:

- A total of 11 bond claims were filed by consumers against a dealership which had gone out of business. These claims exceeded the \$10,000 bond amount by approximately \$6,451. The bonding company prorated the \$10,000 bond, allotting 10 of 11 consumers two-thirds of the amounts they had paid this dealership. One consumer who paid a \$3,025 down payment to the dealership received only \$1,930. Furthermore, although consumer reimbursements were prorated, the bond was exhausted before an \$800 claim was paid.
- A company with 15 dealership locations went out of business in August 1987. Between August 1987 and February 1988, at least 63 bond claims were filed against the various dealerships. One dealership had 27 claims against a bond, including 22 for repairs and 5 monetary claims. The financial claims amounted to \$2,530, leaving \$7,470 to repair 22 homes. Additional bond request may be submitted to the Board against these dealerships for at least six more months (March through August 1988).
- The bond of a manufacturer was exhausted after full payment of 2 claims and proration of 27 claims. The 27 consumers received approximately one-third of the amount of their

monetary or service claims. For instance, a consumer with service repairs of \$17,200 received \$5,464.

Section 31-17-110 of the South Carolina Code of Laws requires dealers to post a surety bond of \$10,000. Manufacturers are to post a bond of \$75,000, \$50,000, or \$25,000, respectively, for the first, second, or third and each subsequent year of operation.

Four of seven southeastern states (Florida, North Carolina, Tennessee, and Virginia) require dealers to post a bond. In Virginia, the bond is \$15,000 and in Tennessee \$25,000. An official in Virginia stated that legislation for a recovery fund is being proposed this session. However, the method to administer this fund has not been decided. In Florida and North Carolina a dealership having four or fewer locations, must post a bond of \$25,000. More dealership locations in these states require a \$50,000 bond.

Manufacturers are bonded in three of the southeastern states (Florida, Tennessee, and North Carolina). The manufacturer's bond is \$50,000 in Florida and Tennessee and \$2,000 per home up to a maximum of \$100,000 in North Carolina.

When the bond is exhausted before all complaints are resolved, consumers may not be able to repair their homes, or recover their financial losses. If the bond requirements for dealers and manufacturers were increased, consumers would have more protection in the event these companies went out of business or neglected to make needed repairs.

A study committee including Board members, dealers, manufacturers, and officers of financial institutions is reviewing the bonding issue. The Board, based on its own and this committee's review, plans to introduce legislation during the 1989 session.

Surety Bond for Salesmen and Manufacturer Representatives

State law also requires that salesmen and manufacturer representatives post a \$10,000 surety bond. However, only three

claims have been filed against salesman bonds and none against manufacturer representative bonds in the past three years.

Two claims (\$1,020 and \$2,941) against salesman bonds involved down payments on manufactured homes; the third (\$4,230) involved the payment of a lien on a home which was to be used as a trade-in.

None of the southeastern states except South Carolina require salesmen or manufacturer representatives to post a bond. A lower bond could still protect consumers against problems with manufactured housing salesmen.

RECOMMENDATIONS

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §31-17-100 OF THE SOUTH CAROLINA CODE OF LAWS TO INCREASE THE BOND FOR DEALERS FROM \$10,000 TO \$25,000, DECREASE THE BOND FOR SALESMEN FROM \$10,000 TO \$5,000, AND ELIMINATE THE BOND FOR MANUFACTURER REPRESENTATIVES.

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §31-17-100 OF THE SOUTH CAROLINA CODE OF LAWS TO REQUIRE THE MANUFACTURER'S BOND TO BE AT LEAST \$75,000 FOR THE FIRST YEAR AND \$50,000 FOR THE SECOND AND EACH SUBSEQUENT YEAR.

Appeals

In February 1987, the Board changed its administrative hearing body from a panel of Board members to the full Board (see p. 10). This resulted in the full Board hearing cases as well as appeals of these cases.

Section 31-17-120(b) of the South Carolina Code of Laws states:

The Board shall hear all cases where a violation has been committed Any person aggrieved by any ruling of the Board denying a license or suspending or revoking a license may appeal to the Board

Further, the operating procedures of the Board provide that any party unsatisfied with an order/decision of the Board may request an appeal.

The court system is the first level of appeal in six of the seven southeastern states (Alabama, Florida, Georgia, Mississippi, Tennessee, and Virginia). In North Carolina, the Board hears appeals but does not hear cases.

Only one case has been heard and appealed before the Board. However, allowing the Board to hear cases and appeals creates a situation where the Board may have to reverse its own decisions. Also, consumers and persons working in the manufactured housing industry who feel that Board decisions are unjust may be reluctant to request an appeal from the same body that originally heard the case.

RECOMMENDATION

IF THE BOARD IS REESTABLISHED, THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §31-17-120 OF THE SOUTH CAROLINA CODE OF LAWS TO CHANGE THE FIRST LEVEL APPEAL BODY FROM THE MANUFACTURED HOUSING BOARD TO THE COURT SYSTEM.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

Section 31-17-90 of the South Carolina Code of Laws requires that one of the seven members of the Manufactured Housing Board be a public member. This member cannot be associated with other industries represented on the Board except as a minority stockholder.

The Board routinely holds one meeting a month and held eight meetings in 1987. The public member and two non-Board members, including an officer of the South Carolina Manufactured Housing

Institute (a trade association) and a local dealer, frequently attended these meetings.

The Board submits a schedule of its meeting dates by fiscal year, as well as monthly notices and agendas, to a state-wide newspaper and two national wire services. Also, information on meetings is posted in the building and outside the offices of the Manufactured Housing Section.

A home owner's manual which lists the Board as the agency handling complaints is to be provided by manufactured housing dealers to all consumers purchasing a manufactured home. Although a sample of complaints resolved in the past three years did not indicate that consumers had major problems contacting the Board, there was evidence that some consumers did not receive this manual. According to an agency official, consumers are sometimes referred to the Board by the Department of Consumer Affairs or the applicable manufacturer and/or dealer.

The Board's address and telephone number are listed in the state and public directories under the heading "Manufactured Housing Board." However, a second listing is under different headings. The state directory lists Board information under the heading of the "Budget and Control Board" (General Services), while the public directory lists the Board under the heading "General Services." Also, the state, unlike the public directory, lists separate telephone numbers to register complaints and for other purposes.

Consumers who do not know that the Board is a part of the Budget and Control Board (General Services) or who are not familiar with the term "manufactured housing" may not know what agency to contact to register a complaint.

RECOMMENDATION

THE BOARD SHOULD CONSIDER OBTAINING AN ADDITIONAL LISTING IN THE STATE AND PUBLIC DIRECTORIES UNDER THE HEADING "MOBILE HOMES." IN ADDITION, THE BOARD SHOULD INCLUDE BOTH OF ITS TELEPHONE NUMBERS TO REGISTER

COMPLAINTS AND FOR OTHER PURPOSES IN THE PUBLIC
DIRECTORY.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

As noted, the Manufactured Housing Board and the Section are two separate entities. The Audit Council found no evidence that the Manufactured Housing Board or the Manufactured Housing Section duplicate the services, functions, or programs of federal or local agencies. However, the Board and the Section may duplicate each other's services when both are involved in the resolution of complaints prior to the appeals process (see p. 6).

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS, FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW, HAVE BEEN PROCESSED.

The Manufactured Housing Section of the Division of General Services investigates consumer complaints involving:

- Violations of the United States Department of Housing and Urban Development (HUD) standards; and
- Questionable sales transactions (regular complaints).

Seven Compliance Assurance Inspectors of the Manufactured Housing Section (within the Division of General Services) inspect homes when consumers (who have filed written complaints) are unsatisfied with repairs made by the applicable dealer or manufacturer. Inspections are made to verify compliance with the federal building standards which are administered by HUD. These standards address manufactured housing construction, plumbing, heating, and electrical systems. The standards are designed to

protect consumers from imminent safety hazards and serious defects by requiring dealers and manufacturers to make repairs.

Regular complaints, which are handled by the consumer analysts of the Section, generally concern contractual or monetary disputes between consumers and dealers. According to an agency official, these complaints are usually resolved by telephone or through correspondence.

The Audit Council sampled 10% of both types of complaints (87 of 867 HUD complaints and 5 of 47 regular complaints) resolved in the past 3 years. The average time to resolve these complaints was respectively 138 and 117 days.

While the Council's review showed no major problem with the handling of regular complaints, there were problems with HUD complaints which may impact the volume of complaints and repairs. (From FY 84-85 to FY 86-87 the Board on average received 110 complaints per month.) These problems are discussed below.

HUD Standards

The Manufactured Housing Section has, without authority, required dealers and manufacturers to make repairs which did not present an imminent safety hazard or serious defect, or violate a state law or regulation. In at least 45 of 87 (52%) of the cases reviewed, inspectors required dealers or manufacturers to correct problems which did not violate the HUD standards or state laws. For example, on a HUD inspection form, an inspector required the repair of kitchen cabinet drawers because the fronts were pulling off. In another instance, a different inspector required a manufacturer to repaint the ceilings throughout a home (excluding one room) because the touch-up paint did not match. The two inspectors did not document the federal or state law violated in either case. Further, the Audit Council could find no law or regulation requiring these types of problems to be corrected by dealers or manufacturers.

The National Manufactured Home Construction and Safety Standards stipulate that any consumer complaint requiring

corrective action must make a home unfit for ordinary use, violate a specific standard and/or present an unreasonable risk of severe injury or death. Also, the Manufactured Housing Section's operating procedures require inspectors to reference all nonconformances to a HUD standard.

An agency official told the Council that inspectors have based some repairs on their individual opinions rather than on the federal standards. Further, this official stated that inspectors have included items on inspection forms which did not violate a HUD standard as items which needed repair.

Manufactured Housing Set-Up Legislation Needed

The federal government does not regulate installation of manufactured homes. As a result, state and local governments have an option to regulate manufactured home installations. In South Carolina, although the dealer is responsible for setup, there is no law which governs set-up procedures.

Complaints reviewed by the Council revealed a possible problem with the setup of manufactured homes. Setup involves operations performed at the occupancy site which make a manufactured home suitable for habitation. Setup includes, but is not limited to, positioning, blocking, leveling, supporting, tying down, and connecting the utility systems of a manufactured home. In addition, setup involves assembly of multiple or expandable units, such as double-wide homes.

In approximately one-third of the cases sampled (35 of 87 cases), there were set-up problems or problems resulting from setup. Further, two staff members estimated that 85% of the complaints received by the Board involve set-up problems.

At least 24 states, including six of the southeastern states (Alabama, Florida, Mississippi, North Carolina, Tennessee, and Virginia) have installation standards for manufactured homes. It is difficult to compare set-up legislation among the states, due to the different administrative requirements. However, Mississippi, where dealers are also responsible for setup, has

regulations governing anchorage, blocking, and tie-down of homes.

An official with the National Conference of States on Building Codes and Standards (NCSBCS) states that improper setup can cause a number of problems which include the home being unstable, warped floors, and roof leaks. Further, according to a National Manufactured Housing Institute publication, it is essential that an experienced crew install manufactured homes to ensure proper leveling and anchoring.

Ensuring that manufactured homes are properly setup is in the public interest, and could eliminate the majority of complaints filed with the agency. Further, when a dealer changes ownership or goes out of business, the consumer may have no recourse for correcting deficiencies resulting from improper setup.

Conclusion

The Board's staff has inspected and resolved consumer complaints which did not violate applicable state or federal laws. Time spent on these activities may affect the timely repair of problems which violate the law. Also, time spent investigating these complaints could be spent on needed and current Section activities such as study of necessary set-up legislation or more timely investigation of valid complaints.

RECOMMENDATIONS

THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES SHOULD REVIEW STATE AND FEDERAL MANUFACTURED HOUSING LAWS FOR WHICH THEY ARE RESPONSIBLE FOR ENFORCING.

COMPLIANCE ASSURANCE INSPECTORS OF THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES SHOULD REQUIRE CORRECTIVE ACTION ON COMPLAINTS WHICH VIOLATE HUD OR STATE MANUFACTURED HOUSING LAWS. COMPLAINTS SHOULD DOCUMENT THE SPECIFIC LAW OR REGULATION WHICH IS VIOLATED.

THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES SHOULD REVIEW INSTALLATION LEGISLATION IN OTHER STATES AND RECOMMEND APPROPRIATE MANUFACTURED HOUSING SET-UP LEGISLATION FOR SOUTH CAROLINA.

Outstanding Complaints

The Chairman of the Manufactured Housing Board was the Secretary-Treasurer of a dealership which was neither licensed nor bonded and has unresolved, outstanding complaints. Agency records show that this dealership operated for at least 1.5 months in 1986 before obtaining a license. During this period, at least two homes were sold.

This individual was a Board member during his involvement with this business and has been licensed as a "manufactured housing salesman" since 1980 (approximately five years before becoming an officer of this company). Although the dealership is no longer in business, two consumer complaints (including four repair items) are outstanding. Both complaints involve the need for releveling the homes.

Section 31-17-100 of the South Carolina Code of Laws states:

No person shall engage in the business of selling, wholesale or retail as a dealership . . . without being licensed by the Board. [Emphasis Added]

Further, §31-17-110 requires dealers to furnish a \$10,000 corporate surety bond. This means that any dealership licensed by the Board has to be bonded.

When Board members are affiliated with an unlicensed dealership, they fail to set a proper example for persons in the manufactured housing industry. In addition, when a dealership is not licensed, and thus not bonded, consumers are not protected if the business closes or refuses to make needed repairs. As a result, consumers may not be able to get their homes repaired.

According to staff, the Board has not been informed of this Board member's involvement or of the complaints. However, the

Board member, on three occasions, was sent correspondence by the Manufactured Housing Section requesting that he either resolve each complaint or provide a status report on both complaints. The Board does not have a policy for handling complaints against Board members who work in the industry.

RECOMMENDATIONS

THE MANUFACTURED HOUSING SECTION OF GENERAL SERVICES SHOULD ENSURE THAT OUTSTANDING COMPLAINTS ARE RESOLVED IN A TIMELY MANNER.

IF THE MANUFACTURED HOUSING BOARD IS REESTABLISHED, IT SHOULD ESTABLISH A POLICY REGARDING THE HANDLING OF COMPLAINTS AGAINST BOARD MEMBERS AFFILIATED WITH THE MANUFACTURED HOUSING INDUSTRY.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Audit Council reviewed the Manufactured Housing Board and found problems with Board representation and possible conflicts of interest involving Board members. Further, the Board has implemented a policy which should have been promulgated as a regulation. These issues are discussed in detail below.

Board Membership

The Board is composed of seven members which by law must include a manufactured housing dealer/owner, a manufactured housing salesman, a manufacturer, a full-time employee of a fire department, a representative of the fire and casualty insurance business, a representative of the banking and finance business, and a member from the general public. However, the Second Vice Chairman of the Board (Board Chairman from 1985 through 1987) who was appointed to represent the insurance industry, also owns

manufactured housing dealerships. On August 13, 1987, this member was issued licenses for two dealerships of which he was 100% owner. As a result, since September 1987, two dealers (rather than one) have been on the Board. In addition, the terms of the Board members representing the insurance industry and the fire department expired on August 31, 1987.

Potential Conflicts of Interest

The Chairman of the Board, who represents manufactured housing salesmen, is employed as a salesman by one of the dealerships owned by the Second Vice Chairman of the Board. This member's employment began on August 18, 1987 (approximately 5 days after the dealership was licensed). Because the Board Chairman depends on this Board member for his livelihood, his voting and decision making may be influenced by the Board member who employs him.

In addition, the Second Vice Chairman (who, as noted, represents the insurance industry and owns dealerships) also sells bonds to manufactured housing licensees. This individual has presided over and voted on a case which allowed the licensing of a dealership to which he sold a surety bond. The owner of the company receiving the license previously owned 15 companies which went out of business, and all of the companies have outstanding complaints which have not been resolved. By presiding and voting on this case, this member participated in a Board decision in which he had a financial interest.

A Board policy requires that members disqualify themselves when they are involved in cases before the Board. Further, §8-13-10 of the South Carolina Code of Laws states:

. . . public office . . . is a public trust and any effort to realize personal gain through official conduct is a violation of that trust.

Also, §8-13-120(e) requires the State Ethics Commission to investigate allegations against any public official or employee.

Conclusion

The Board's credibility may be jeopardized by its composition and possible conflicts of interest involving its members. When half of the voting members on the Board are directly affiliated with the manufactured housing industry (a manufacturer, a salesman and two dealers), there may be a question as to whether the interests of consumers are being served. Additionally, there may be an appearance of impropriety when a Board member has an interest in cases he votes on or when one Board member is employed by another.

The Board's policy which safeguards against possible conflicts of interest does not specify circumstances in which Board members are to abstain from Board decisions. Also, the Board has not established procedures to notify the Ethics Commission of potential ethics violations by Board members.

RECOMMENDATIONS

THE BOARD MEMBERS, WHOSE TERMS HAVE EXPIRED, SHOULD EITHER BE REAPPOINTED TO THE BOARD OR REPLACED.

THE BOARD MEMBER REPRESENTING THE FIRE AND CASUALTY INSURANCE BUSINESS SHOULD CONSIDER RESIGNING SO AN INSURANCE REPRESENTATIVE WHO IS NOT ASSOCIATED WITH OTHER INDUSTRIES REPRESENTED ON THE BOARD CAN BE APPOINTED.

IF THE MANUFACTURED HOUSING BOARD IS NOT TERMINATED, IT SHOULD DEVELOP A POLICY WHICH SPECIFIES SITUATIONS IN WHICH A BOARD MEMBER SHOULD BE DISQUALIFIED FROM PARTICIPATING IN BOARD ACTION.

THE MANUFACTURED HOUSING BOARD SHOULD DEVELOP PROCEDURES FOR REQUESTING OPINIONS FROM THE ETHICS COMMISSION IF POTENTIAL ETHICS VIOLATIONS ARE DETERMINED TO EXIST ON THE BOARD.

Compliance With the Administrative Procedures Act

The Manufactured Housing Board has adopted a policy which allows it to deny, revoke, or suspend a license when an applicant or licensee has pleaded guilty to a crime or has been convicted of a crime. However, the Board is not authorized by state law or regulation to deny, revoke, or suspend a license when a person is guilty of a crime unless the crime involves the sale of manufactured homes.

Section 31-17-100(8) of the South Carolina Code of Laws allows the Board to deny a license only after regulations have been promulgated. Also, the South Carolina Administrative Procedures Act (APA) requires state agencies to notify the General Assembly of proposed changes which affect the general public and to give public notice in the State Register.

If the Board wishes to adopt or amend regulations, it should follow the procedures outlined in the APA. The legal enforceability of Board regulations not processed through the APA is questionable because these policies do not have the effect of law.

RECOMMENDATION

CHANGES IN MANUFACTURED HOUSING REGULATIONS SHOULD BE PROMULGATED AS OUTLINED IN THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT.

APPENDICES

APPENDIX A
STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES



CARROLL A. CAMPBELL, JR.
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

EARLE E. MORRIS, JR.
COMPTROLLER GENERAL

JAMES M. WADDELL, JR.
CHAIRMAN
SENATE FINANCE COMMITTEE

ROBERT N. McLELLAN
CHAIRMAN
HOUSE WAYS AND MEANS COMMITTEE

JESSE A. COLES, JR., Ph.D.
EXECUTIVE DIRECTOR

BUILDING CODES AND REGULATORY SERVICES
1201 MAIN STREET, SUITE 520
COLUMBIA, SOUTH CAROLINA 29201

June 21, 1988

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

These comments come in response to the draft report issued by the Legislative Audit Council with reference to the South Carolina Manufactured Housing Board.

BACKGROUND AND ORGANIZATION

Page 6 -

Section 31-17-90 of the South Carolina Code of Laws provides that the "Division of General Services of the Budget and Control Board shall supervise the enforcement of the laws and regulations of the South Carolina Manufactured Housing Board and shall employ and supervise personnel necessary to carry out the duties of the South Carolina Manufactured Housing Board."

Although the Audit Council states on page two that the Manufactured Housing Section has been designated as the State Administrative Agency, §31-17-130, Code of Laws of South Carolina clearly gives that responsibility to the Board, whose duties are carried out by the staff. Indeed, there is no "Manufactured Housing Section" other than the "personnel necessary to carry out the duties of the South Carolina Manufactured Housing Board." Throughout the Audit Council report, the reference to a "Section" creates confusion as in fact there is only the Board and "the staff" which is employed and supervised by General Services to carry out the Board's duties.

IMPACTS OF DEREGULATION

Page 9 - Delay of Hearings

Contrary to the report's suggestion, the Board has held meetings in a timely manner in virtually all cases within the time restraints required by the S.C. Code of Laws. By statute, §31-17-90, the Board is to meet "not more than once a month." Also, the Administrative Procedures Act requires that notice "of not less than thirty days" be given prior to a hearing.

Mr. George L. Schroeder, Director
June 21, 1988
Page 2

Accordingly, there is necessarily some time between the receipt of a complaint and a hearing. However, the illustration used by the Legislative Audit Council is an extreme situation and, furthermore, is inaccurate.

The example indicates that it took a manufactured housing dealer nine months to correct a home which presented a possible imminent safety hazard. A more proper recitation of the facts is as follows:

The home was inspected by the Manufactured Housing Inspector on March 13, 1987. There was no identification of an imminent safety hazard on the state inspector's original inspection report of that date. There was no reason for the Inspector to suspect an imminent safety hazard because a change-out of a furnace does not necessarily bring a home out of compliance with Federal Standards. The report only mentioned that the home came with a Coleman electric furnace and was changed from electric to gas by the dealer. A review of the contract for the purchase of the home indicated that it was offered and sold with the original electric furnace. There is nothing on the contract to indicate that a gas furnace was part of the original sale. A letter dated April 15, 1987, from C & H Company, installer of the gas furnace in question states that the installation was proper. While the SAA Handbook does require that serious defects or imminent safety hazards be referred to HUD for determination, and lists improper installation of a furnace as a possible hazard, that reference relates to manufacturer related problems, or problems caused by alteration made by a dealer prior to the sale of the home. The record reveals that this alteration was made after the sale of the home. The first mention of a possible imminent safety hazard was during the hearing held before the Manufactured Housing Board on October 14, 1987. Neither Federal or State law requires that the Manufacturer's DAPIA issue prior approval of an alteration by the dealer after the sale of a home. The Board has in the past through its policing powers required DAPIA approval; however, this is not required by any Federal or State law.

Additionally, a determination was made during the investigation of this complaint that the consumers had never used the furnace and had utilized kerosene heating appliances during the cold weather months. Therefore, even if the alleged imminent safety hazard did exist, it was not known to exist until October, 1987, and the Board's Order that all repairs to the home be effected within thirty days of the hearing date was fulfilled by the dealer.

In regard to the delay in setting the hearing, the consumer's file was not received by the Administrative Support Staff to be scheduled for a hearing until June 22, 1987. At that time, under the Administrative Procedures Act guidelines, there was not sufficient time to allow thirty days notice for the July 8, 1987, meeting. The hearing schedule for the August 14, 1987, meeting was full and there was no September Board meeting because of the pending move of administrative staff facilities to the AT&T

Mr. George L. Schroeder, Director
June 21, 1988
Page 3

Building. Therefore, the hearing was set for the next available hearing date on October 14, 1987.

With the exception of the August 1987 hearing, the Board regularly hears all cases which are pending and for which the required notice has been given, at each monthly meeting.

Page 10 - Use of a Hearing Examiner

The Council is correct in that the use of the Hearing Examiner in the consumer complaint process was discontinued due to the lack of statutory authority. The findings of the Examiner had to be approved by the full Board before becoming an order, thereby lengthening the hearing process. The chart below indicates the increased workload and time generated by the use of a Hearing Examiner.

ADMINISTRATIVE HEARING PROCESS

HEARING EXAMINER

-vs-

FULL BOARD

- | | |
|---|---|
| 1. Request for Administrative Hearing | 1. Request for Administrative Hearing |
| 2. Administrative Hearing Scheduled
(Coordinate schedules of Inspectors
and Board Members 30 day notice
required). | 2. Administrative Hearing scheduled for
Regular Board Meeting (30 day notice
required.) |
| 3. Hearing Held -Proposed Recommendation
by Hearing Examiner. | 3. Hearing Held - Decision by Board. |
| 4. Proposed Findings and Recommendations
forwarded to aggrieved party (30 days
allowed for response.) | 4. Order of the Board forwarded
to all parties. |
| 5. Findings and Recommendations along
with response presented to Board at
next scheduled meeting for approval/
ratification or change. | 5. Complaint resolved and file closed;
or |
| 6. Order of the Board forwarded
to all parties. (30 days maximum
time for resolution of complaint). | 6. Failure by party to follow Board's
directives. |
| 7. Complaint resolved and file closed or; | 7. Show cause/License Review/Rehearing
(30 day notice required). |
| 8. Failure by party to follow Board's
directive. | |
| 9. Show cause/License Review/Rehearing
before Full Board (30 days notice
required). | |

However, if statutory authority existed for a Hearing Examiner, who had the authority to issue an order, the process would be the same as indicated in the chart above for the full Board with the exception that hearings would be held after the 30 days notice on the inspector's weekly office

Mr. George L. Schroeder, Director
June 21, 1988
Page 4

day, which would mean that the maximum time a consumer would wait for a hearing would be 30 days plus five working days.

Page 12 - Licensure of Salesmen and Manufacturer Representatives

The Legislative Audit Council states that state laws requiring salesmen to be licensed are unnecessary and do not provide additional protection to the public. If licenses are not required, there will be no way to prevent the unscrupulous salesman from continuing in business even though his behavior is such as would now result in his loss of license and the loss of his ability to continue to prey on the unwary consumer. Of course, the requirement of a license does not prevent all misconduct, however, it is submitted that it does help reduce such conduct and prevents repeated misconduct by the salesman who has lost his license.

The Audit Council indicates in this section that "the license year has been extended through September of each year". While some licenses were not issued until September, the Section has not extended the license year.

Renewal application forms and a detailed letter of instruction are mailed out on May 1 of each year although the renewals are not due until July 1. Most applications are not received for processing until the last two weeks in June or the first week of July. Each application is individually reviewed for correctness, proper bond and fee. It is estimated that 80% of all application packages are incorrect on initial receipt and the packages are returned to applicants with letters identifying the problems. It is further estimated that 30% or more of those returned application packages are still incorrect when they are received for a second time, thereby requiring them to be returned with another letter identifying the problems, further delaying the process even longer. However, license packages which are complete when received are processed and licenses issued within a five day working period.

Additionally, in previous years, all licenses were issued manually, however, in 1985, General Services began negotiating with the Division of Information Resource Management for the implementation of a comprehensive licensing and complaint processing computer program. This program upon its implementation during the 1988-89 license year should cut processing time at least one-half, thus, reducing the administrative costs involved in the licensing process.

Page 13 -

The report points out that in each of the past three years approximately two-thirds (an average of 1,200) of the licensees were salesmen or manufacturer representatives and it is then observed that licensing fees in FY 86-87 for those categories were only \$9,850. As the minimum fee is \$10, the average receipt for each year is apparently \$12,000, not the \$9,850 to which attention is called.

Mr. George L. Schroeder, Director
June 21, 1988
Page 5

ADMINISTRATIVE COSTS

Page 16 - Revenues Not Sufficient To Cover Costs

The report states that Section 129.41 of the FY 87-88 State Appropriation Act requires regulatory agencies to recoup their costs. The Audit Council cited several ways in which to recoup costs of regulating the industry, one being that licensing fees for dealers and manufacturers could be increased, and one other that the Board's functions could be discontinued and assumed by the Manufactured Housing Section. The discontinuance of the Board would have no appreciable effect as the annual cost for subsistence and per diem of Board members is approximately \$6,400. Further, the Board is presently considering increasing license fees through legislation.

EFFICIENCY OF ADMINISTRATION

Page 17 -

The report refers to the "arbitrary reduction" of fines imposed against licensees who violate state laws. There is no "arbitrary" reduction of fines, although the fines are often reduced after a full hearing of the evidence in the case.

Page 18 - Fines

The Audit Council has recommended that, "The Manufactured Housing Section of General Services should establish written standards for penalizing persons and companies selling manufactured homes without a license. Also, the Manufactured Housing Section should establish written guidelines which specify situations in which fines can be reduced. The reason for any reduction should be justified in writing;" and that the State could recoup the cost of regulating the industry by discontinuing the arbitrary reduction of fines imposed against non-licensees (see page 13 of Legislative Audit Council's report).

While these recommendations appear to be reasonable on the surface, if adopted, they would fail to attain the objectives set forth by the Audit Council. The State Inspector's role is to cite alleged violations based on his perception as to what sales transactions have taken place or were proffered. The role of the Hearing Examiner is to accept testimony from the Inspector as well as the alleged violator and to weigh any evidence submitted in mitigation or contradiction to the Inspector's assessment. The South Carolina Code of Laws, Section 31-17-120 (a) provides that "if, upon appearance, the Examiner shall determine that the administrative penalty should be imposed...", this gives the Examiner the opportunity to impose a penalty or absolve the penalty.

The Hearing Examiner needs the flexibility to weigh all evidence. Written standards would remove most of that flexibility and would probably

Mr. George L. Schroeder, Director
June 21, 1988
Page 6

result in the imposition of greater fines which are generally uncollectible. Fines cannot be viewed as a means for raising revenue. The purpose of the fine is to encourage licensure and bond for the protection of consumers. In fact, the imposition of a large penalty could possibly deter future licensure and bond, because a salesperson is generally not in a position to pay a large fine and the dealer employing that salesperson usually immediately terminates his employment, thus, leaving an unpaid fine, and consumers who may have purchased homes during the non-license period without the protection of a bond.

Therefore, the cases cited in the report with regard to the reduction of fines by the Hearing Examiner are in keeping with office policy and experience that if a smaller fine is imposed, it is more likely that the aggrieved or non-licensee will become licensed and bonded.

In all cases of non-license violation, if the alleged violator appears at the hearing and presents an application for license, a bond retroactive to the date the first home was sold (dealer, salesperson) or shipped into the state (manufacturer), is required before a license is issued.

Page 21 - Surety Bond for Salesmen and Manufacturer Representatives

Even though the largest bond claim against a salesman in the last three years was for \$4,230, prices do appear to be increasing and a reduction of the salesman's bonds from \$10,000 to \$5,000 does not appear to be prudent. Rather, they should remain at \$10,000 and we should hope that they will never be used.

AGENCY DUPLICATIONS

Page 25 -

As previously pointed out, the "Board" and the "Section" are not two separate entities, there is a Board and the staff which carries out the Board's duties.

HANDLING OF COMPLAINTS

Page 26 - HUD Standards

Under this section the Audit Council has indicated that in fifty-one per cent of cases reviewed, inspectors required dealers and manufacturers to correct problems which did not violate a HUD Standard or a state law. The Council further stated that, "any consumer complaint requiring corrective action must make a home unfit for ordinary use, violate a specific standard and/or present an unreasonable risk of severe injury or death."

The Federal Standards provide that if there are "noncompliances" or "defects" in a single home, the manufacturer is not required to notify the

Mr. George L. Schroeder, Director
June 21, 1988
Page 7

home owner or correct the home. However, if a class of homes is suspected to be affected by a "defect", the manufacturer is required to notify the home owner but correction of homes is not required. If one or a class of homes is affected by "serious defects" or "imminent safety hazards", the manufacturer is required to correct the homes (SAA Guidebook; 3-31-87, page 2).

Corrective action is only required under limited circumstances under the Federal Act, and therefore it is estimated that ninety-five per cent of the complaints received would not require repair. Therefore, the recommendation made by the Legislative Audit Council that, "The Compliance Assurance Inspectors should require corrective action on complaints which violate HUD Standards," if adopted, would result in the correction or repair of approximately five per cent of the manufactured housing complaints received. This would result in the courts being the only avenue of redress, thereby overburdening the court system.

The Federal Standards are used by inspectors to cite specific problems found within a particular manufactured home. The use of that citation does not in itself indicate that the Federal Standards require repair. The main way the Manufactured Housing Board and Staff effects correction of "nonconformances" or "defects" is through the statutory authority for licensing of manufacturers and dealers (Regulation 19-425.6 (K), "Failing to appear before the Board upon due notice, or to follow directives of the Board"). Through its policies, the Board has required the correction of nonconformances even though the Federal Standards may not require repair.

While it is possible that upon occasion, inspectors have cited problems that violated neither Federal or State law, it would be extremely rare. Through the Board's policy for correction of nonconformances and Regulation 19-425.6 (K), "Failure to follow directives of the Board," the language is broad enough to support most problems noted by Inspectors.

Therefore, the conclusion that the Manufactured Housing Board and Staff has inspected and resolved consumer complaints which did not violate applicable State or Federal laws is unfounded. Further, the recommendation that time be spent on the study of legislation is well taken as the Section has already completely rewritten the current legislation to make it more responsive to today's needs and is presently awaiting approval from the Board. Further, the conclusion that time would be better spent toward a more timely investigation of valid complaints is also unfounded. Complaints are received and determined to be valid before the scheduling of an inspection. Complaints are presently inspected within a two-week period after receipt.

COMPLIANCE WITH THE LAW

Page 31 - Potential Conflicts of Interest

Mr. George L. Schroeder, Director
June 21, 1988
Page 8

The Council addressed a potential conflict of interest and the Board is aware that this problem exists; however, the membership term of the member involved in the potential conflict expired August 31, 1987; he is not seeking reappointment and is only serving according to state law until another individual is appointed. The Board will develop policies as recommended which will specify situations in which a Board Member should be disqualified from participating in Board actions and will also develop procedures for requesting opinions from the Ethics Commission if potential ethics violations are determined to exist on the Board.

ADDITIONAL COMMENTS

Throughout the report, the Audit Council has cited reasons to discontinue the Board, however the Board has a very real need and purpose. The Board seeks to insure that the manufactured home consumer has an avenue of redress that is of minimal expense and provides a timely resolution to problems. Further, the composition of the membership of the Board insures that it can offer areas of expertise that are important in assisting consumers in the resolution of problems. Additionally, South Carolina is ranked fifth in the nation in manufactured housing shipments and therefore has a large manufactured housing industry that must be regulated for the good of the general public.

The Board has always sought to provide relief yet act within its statutory bounds. The legislation under which the Board operates is, for the most part, the original legislation. The Board does recognize the need for major revisions to the statute under which it operates and is currently considering several of the recommendations made by the Audit Council.

Rather than terminating the activity of the Board, the General Assembly should seriously consider increasing the Board's responsibility and statutory authority. The Board has been increasingly faced with business failures, bankruptcies, criminal activities by dealers, etc. This has had a profound effect on the consumers of the state. For the most part, because of the limits of the Board's statutory authority, many of the problems raised by these activities have been outside the Board's authority. The Board is seriously considering proposed legislative changes which would:

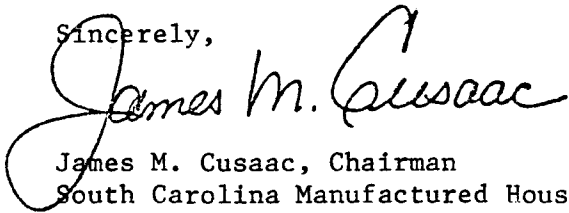
- a. Provide for competency testing for dealers and salespersons;
- b. Provide for the use of a Hearing Examiner, with the Board serving as the first level of appeal;
- c. Increasing licensing fees;
- d. Eliminate licensing and bonding requirements of the manufacturer representative;
- e. Increase bonding requirements for manufacturers and dealers, or otherwise provide more monetary protection for consumers;
- f. Establish setup legislation;

Mr. George L. Schroeder, Director
June 21, 1988
Page 9

- g. Assess penalties for license violators;
- h. Establish testing for licensing and bonding of setup contractors;
- i. Provide for a system of approval for all alterations made to certified manufactured homes by dealers in the state and charge a fee for this approval;
- j. Provide for inspection of used homes on retail dealer lots to insure a minimal level of safety and durability at the time of the sale;
- k. Provide a state warranty law.

The Legislative Audit Council's report has helped us in honing issues that need to be addressed. Thank you for allowing me to make these comments. I hope the information provided will lead to some clarification on the points raised.

Sincerely,



James M. Cusaac, Chairman
South Carolina Manufactured Housing Board

JMC/pf

APPENDIX B
STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES



CARROLL A. CAMPBELL, JR.
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

EARLE E. MORRIS, JR.
COMPTROLLER GENERAL

JAMES M. WADDELL, JR.
CHAIRMAN,
SENATE FINANCE COMMITTEE

ROBERT N. McLELLAN
CHAIRMAN,
HOUSE WAYS AND MEANS COMMITTEE

JESSE A. COLES, JR., Ph.D
EXECUTIVE DIRECTOR

BUILDING CODES AND REGULATORY SERVICES

1201 MAIN STREET, SUITE 820
COLUMBIA, SOUTH CAROLINA 29201

June 21, 1988

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

These comments are in response to the draft report issued by the Legislative Audit Council regarding the South Carolina Manufactured Housing Board.

HANDLING OF COMPLAINTS

Page 29 - Outstanding Complaints

The auditor has noted that while I was serving as a member of the Manufactured Housing Board, I was also the Secretary-Treasurer of an unlicensed dealership and that two complaints arose out of that business transaction.

The corporation in question was incorporated in December of 1985. I was asked to serve as an officer to assist in getting the company started, but I had no financial interest in the corporation. The purpose of this corporation was to assume the operation of another dealership that was considering going out of business.

Between the time of the incorporation of the new business and the actual start-up of that business two contracts were let, one on January 23, 1986, and the second on March 10, 1986. These contracts indicated that the manufactured homes in question had been sold by the new company. However the previous company was still fully operational, licensed and bonded to do business in the State. While the contracts do indicate that the homes were sold by the corporation with which I was affiliated, the homes were actually sold by the previous company with which I had no affiliation. Because I had no managerial responsibility I do not know how or why the contracts were issued in the new corporate name.

Mr. George L. Schroeder, Director
June 21, 1988
Page (2)

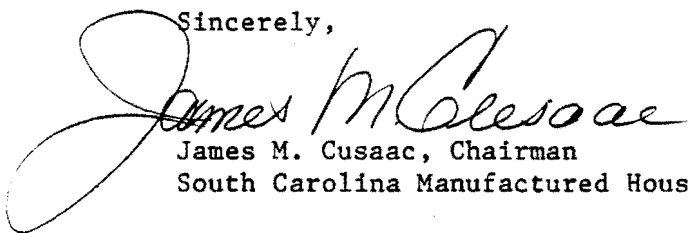
I was advised of these two complaints by the Manufactured Housing Staff and worked with the manufacturer to insure that the outstanding manufacturer related problems were resolved. I also contacted a local dealer to perform the dealer related problems. I assumed that the complaints had been resolved as I had no further contact from staff until January 19, 1988. I was again notified on January 19, 1988, that the dealer complaints were still outstanding. I intended to make a monetary settlement and had requested that a meeting with staff be scheduled to determine a reasonable resolution to the problems. The offer is still being negotiated through the Manufactured Housing Office.

While I do not believe that I am legally responsible for the resolution of these complaints, I do sympathize with the consumers and I am willing and intend to offer monetary settlements.

During my eight year tenure as a sales person licensed by the Manufactured Housing Board no other complaints or violations have been noted. Since this was a confusing situation and an obvious misunderstanding and would reflect negatively on the Board as a whole, I respectfully request that my comments be published along with the final report.

I want to thank you for allowing me the opportunity to offer my comments, and I hope this will clarify the matter noted.

Sincerely,



James M. Cusaac, Chairman
South Carolina Manufactured Housing Board

JMC:dm

APPENDIX B (CONTINUED)

STATE OF SOUTH CAROLINA
BUDGET AND CONTROL BOARD
DIVISION OF GENERAL SERVICES



CARROLL A. CAMPBELL, JR.
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

EARLE E. MORRIS, JR.
COMPTROLLER GENERAL

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CHAIRMAN,
SENATE FINANCE COMMITTEE

ROBERT N. McLELLAN
CHAIRMAN,
HOUSE WAYS AND MEANS COMMITTEE

JESSE A. COLES, JR., Ph.D
EXECUTIVE DIRECTOR

BUILDING CODES AND REGULATORY SERVICES
1201 MAIN STREET, SUITE 820
COLUMBIA, SOUTH CAROLINA 29201

June 9, 1988

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

This is to certify that Mr. Cusaac, Chairman of the S. C. Manufactured Housing Board, responded to my letter of January 19, 1988, concerning the complaints filed against the unlicensed dealership which was noted on Page 29 of the Legislative Audit Council Draft Report, and indicated that he was willing to enter into a monetary settlement with the consumers if it could be arranged. He has requested that I contact the consumers concerning the final negotiations for monetary settlement of the complaints.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy G. Mayer".

Dorothy G. Mayer, Administrative Assistant
Building Codes and Regulatory Services

/dgm

REAL ESTATE COMMISSION

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	49
<u>BACKGROUND</u>	50
<u>SUNSET ISSUES AND FINDINGS</u>	51
(1) EFFECTS OF REGULATION.....	51
Residency Requirement.....	51
Twenty-Five Mile Limit.....	52
Advertising by Real Estate Schools.....	53
Vacation Time Sharing Recovery Fund.....	54
General Recovery Fund.....	55
(2) IMPACTS OF DEREGULATION.....	55
(3) ADMINISTRATIVE COSTS.....	56
(4) EFFICIENCY OF ADMINISTRATION.....	57
Inspections.....	58
Professional Testing Service.....	60
Time Sharing Exam.....	62
Policies and Procedures Manual.....	63
Education and Research Fund.....	63
Biennial License Renewal.....	64
Motor Vehicle Use.....	65
(5) PUBLIC PARTICIPATION.....	66
(6) DUPLICATION OF SERVICES.....	67
Proprietary Schools.....	67
(7) HANDLING OF COMPLAINTS.....	69
(8) COMPLIANCE WITH THE LAW.....	70
Vacation Time Sharing Plans Act.....	70
<u>APPENDICES</u>	74
A - Schedule of Fees.....	75
B - Agency Comments.....	76

INTRODUCTION

After reviewing the laws and operations of the Real Estate Commission, the Legislative Audit Council concludes that the Commission and regulation of the real estate industry should be continued. Termination of regulation would pose a threat to public welfare. However, the General Assembly may wish to consider revising statutes dealing with real estate exams and the Commission's authority to approve real estate proprietary schools. In addition, the Commission should place greater emphasis on maintaining complete and accurate inspection records, as well as adopting formal written procedures for the agency's operations. The Commission should also study the vacation time sharing statutes and recommend changes needed to update these laws.

BACKGROUND

In 1956, the General Assembly created the Real Estate Council to license real estate brokers and salesmen. At that time, the real estate laws were administered by the Insurance Commissioner. In 1960, a separate Real Estate Board was established and authorized to employ a Commissioner to administer the real estate laws and license brokers and salesmen. The Board's name was changed to the Real Estate Commission in 1972.

The Commission consists of nine members. Six members with experience in real estate are selected by the legislative delegations of the six congressional districts. One member is selected from the state at large by the members of the Commission, and two members not professionally engaged in real estate are appointed by the Governor with the advice and consent of the Senate.

The Commission now examines, licenses, and disciplines real estate brokers and salesmen, property managers, and time sharing salesmen. It receives and investigates complaints, holds disciplinary hearings, and approves schools teaching real estate courses. The Commission also administers the Vacation Time Sharing Plans Act, which provides for regulating the time sharing industry, and the Uniform Land Sales Practice Act, which requires out-of-state developers to register with the Commission before selling land to South Carolinians.

As of March 1988, 9,349 real estate brokers, 13,472 real estate salesmen, 641 property managers, and 359 vacation time sharing salesmen were licensed by the Commission. All 50 states and the District of Columbia regulate the real estate industry.

SUNSET ISSUES AND FINDINGS

(1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Real Estate Commission does not regulate the fees charged by real estate agents and, therefore, has no direct control over the prices charged for real estate services. However, regulation increases costs to the profession which may be passed on indirectly to the consumer. These costs include annual license fees and the costs of education, exams, and credit reports. However, it is not likely that these costs of regulation add significantly to the cost of real estate services.

The Commission also administers the Vacation Time Sharing Plans Act and the Uniform Land Sales Practice Act. Both laws require developers to register projects with the Commission and pay a fee for each project. According to Commission officials, the costs of registration do not add significantly to developers' costs.

In addition, the Commission enforces state laws and regulations which may restrict competition and unnecessarily increase costs to consumers. These include a state law which imposes a residency requirement for obtaining a license and a regulation requiring real estate salesmen to live within 25 miles of their offices. Another regulation which may increase costs restricts advertising by real estate proprietary schools. These and other issues are discussed below.

Residency Requirement

The residency requirement for licensure by the Real Estate Commission is restrictive and may be unconstitutional. Section 40-57-90 of the South Carolina Code of Laws states that to become a licensed real estate agent in South Carolina, an applicant must be a resident of the state. However, §40-57-140 allows the

Commission to enter into reciprocity agreements with other states if the standards for licensure are substantially the same. South Carolina has reciprocity agreements with Georgia and North Carolina which allow individuals in those two states to obtain a South Carolina real estate license without being a resident. However, residents of other states cannot obtain a South Carolina real estate license.

The United States Supreme Court has found residency requirements in other professions to be unconstitutional. In a January 1988 letter to the Audit Council, staff of the Federal Trade Commission stated that the residency restriction may hurt the consumer by insulating the industry from competition and increasing consumer prices. At its January 1988 meeting, the Commission voted to ask the General Assembly to eliminate the residency requirement and allow all nonresidents meeting South Carolina qualifications to sit for the South Carolina real estate exam.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING
§40-57-90 OF THE SOUTH CAROLINA CODE OF LAWS TO REMOVE
THE RESIDENCY REQUIREMENT FOR LICENSURE.¹

Twenty-Five Mile Limit

The regulation requiring real estate salesmen and property managers to live within 25 miles of their offices is an unnecessary restriction on the industry. In addition, the regulation conflicts with the Real Estate Commission's upcoming elimination of the residency requirement.

Regulation 105-17 states that a licensee cannot live more than 25 miles from his employer's main or branch office. In a January 1988 letter to the Audit Council, staff of the Federal

¹In June 1988, the Governor signed an act amending §40-57-90 and §40-57-140 to eliminate the residency requirement and address reciprocity. The act takes effect on November 30, 1988.

Trade Commission (FTC) stated that the 25 mile limit could reduce competition among real estate professionals and increase prices for real estate services. FTC staff stated:

Although this restriction may have quality enhancing benefits, these benefits may be minor compared to the potential costs that limited entry could impose on South Carolina consumers.

Also, the General Assembly has amended the Real Estate Commission's statutes which will eliminate the residency requirement for obtaining a real estate license (see p. 51). When the residency requirement is eliminated, the 25 mile limit may conflict with the new law allowing individuals living outside the state to hold a South Carolina license.

RECOMMENDATION

THE REAL ESTATE COMMISSION SHOULD REVISE REGULATION 105-17 TO ELIMINATE THE 25 MILE LIMIT FOR PROPERTY MANAGERS AND REAL ESTATE SALESMEN.

Advertising by Real Estate Schools

A Real Estate Commission regulation restricting advertising by real estate proprietary schools may impose additional costs to consumers. Regulation 105-200 regarding school advertising states, in part, that school advertisements may not appear under the real estate sales or help wanted columns of newspapers or directories.

According to staff of the Federal Trade Commission (FTC), "[l]imiting where advertisements can appear may increase the cost of advertising to potential real estate professionals." The FTC staff recommends reevaluating the advertising restriction in light of the possible cost it could impose on consumers.

In addition, the Commission's authority to promulgate this regulation is questionable. A 1987 Attorney General's Opinion concluded that the Commission does not have the authority to regulate proprietary schools and, therefore, the regulation on school advertising is probably not valid (see p. 67).

RECOMMENDATION

THE REAL ESTATE COMMISSION SHOULD RESCIND REGULATION
105-200 ON ADVERTISING BY REAL ESTATE PROPRIETARY
SCHOOLS.

Vacation Time Sharing Recovery Fund

The Vacation Time Sharing Recovery Fund, administered by the Commission, may not be necessary. Section 27-32-200 through §27-32-220 of the South Carolina Code of Laws established the fund to allow individuals harmed by the actions of time sharing licensees to recover up to \$5,000 of their losses. Time sharing licensees pay \$25 each year to support the fund.

The number of licensees paying into the fund has declined from 585 in 1985 to 350 in 1987. Only four claims have been filed against the fund, and no payouts have been made since the fund became active in January 1982. Only time sharing licensees pay into the fund. However, regular real estate agents also sell time sharing but do not contribute to and are not covered by the fund.

South Carolina is the only southeastern state that has a separate time sharing recovery fund. Other southeastern states have a general recovery fund which serves as a fund of last resort for individuals injured by regular real estate licensees (see p. 55). If the time sharing fund were eliminated, the funds available, \$114,600 as of March 1988, could be used to start a general recovery fund or could revert to the state's General Fund.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING
§27-32-220 OF THE SOUTH CAROLINA CODE OF LAWS TO
ELIMINATE THE VACATION TIME SHARING RECOVERY FUND.
AVAILABLE FUNDS MAY BE USED TO START A GENERAL
RECOVERY FUND OR MAY LAPSE TO THE STATE'S GENERAL
FUND.

General Recovery Fund

South Carolina does not have a general recovery fund to protect the public against fraud or deception by real estate licensees. When a consumer incurs losses as the result of a licensee's actions, the fund allows the consumer to recover lost funds if the licensee has no assets.

Thirty-two states, including seven southeastern states, have recovery funds. In 1987, six southeastern states paid a total of \$302,649 from their recovery funds to 70 consumers. According to officials in these states, a general recovery fund has proved helpful in protecting the public from the fraudulent actions of licensees. In 1987, 59 (16.4%) of the closed complaints filed with the Real Estate Commission concerned problems with misrepresentation or fraud, earnest money, or escrow funds. However, the Commission could not determine how many of these cases could have been resolved through the use of a recovery fund.

South Carolina currently has a time sharing recovery fund which covers only time sharing licensees. This fund has never paid a claim and could serve as the basis for starting a general recovery fund (see p. 54).

RECOMMENDATION

THE REAL ESTATE COMMISSION SHOULD STUDY THE NEED FOR IMPLEMENTING A GENERAL RECOVERY FUND IN SOUTH CAROLINA AND REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE LABOR, COMMERCE AND INDUSTRY COMMITTEES OF THE GENERAL ASSEMBLY.

(2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The absence of regulation of the real estate industry could have a serious impact on the economic welfare of the public.

Buying a home is often the single largest expenditure an individual makes in his lifetime. If real estate sales are handled by incompetent individuals, the potential economic losses to the public could be significant. All 50 states and the District of Columbia regulate the real estate industry.

The Real Estate Commission examines and licenses applicants, investigates complaints, and conducts inspections. Without regulation by the Commission, the public could seek relief from incompetent practitioners through the court system. However, this could be an expensive and time-consuming process.

In addition to licensing real estate professionals, the Commission administers the Vacation Time Sharing Plans Act and the Uniform Land Sales Practice Act. Further, in 1986, the Commission began examining and licensing rental property managers. If the Commission were terminated, these functions would also be terminated or would have to be administered by another state agency.

Termination of regulation could result in increased competition within the real estate industry. It could also bring about an increase in the number of unqualified individuals selling real estate. Therefore, the Audit Council recommends continuing the Commission and regulation of the real estate industry. However, as noted on page 54, the Audit Council recommends eliminating the Vacation Time Sharing Recovery Fund.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

From FY 82-83 through FY 86-87, the Real Estate Commission's expenditures increased 77% from \$646,606 to \$1,148,869. During the same period, Commission revenues increased 137% from \$646,606 to \$1,536,174. Revenues raised through the licensure, registration, and enforcement functions exceeded expenditures by an average of \$230,000 for this five-year period. These funds were retained in the state's General Fund.

The number of full-time Commission employees increased from 20 in FY 82-83 to 29 in FY 86-87. Personal services and employee benefits comprised 60% of the Commission's expenditures in FY 86-87. Six additional positions were approved for FY 87-88.

TABLE 1
SOUTH CAROLINA REAL ESTATE COMMISSION
SOURCE OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>
License/Registration Fees	\$ 610,252	\$ 678,028	\$1,379,471	\$1,173,675	\$1,475,465
Other Fees and Fines	36,354	50,489	28,663	33,333	60,709
TOTAL Revenues	\$ 646,606¹	\$ 728,517	\$1,408,134	\$1,207,008	\$1,536,174
<u>Expenditures</u>					
Personal Services	\$ 329,824	\$ 363,647	\$ 386,230	\$ 491,134	\$ 582,342
Other Operating Expenses	209,670	238,965	296,973	380,865	378,425
Special Items	49,618	51,857	80,000	58,996	75,250
Employee Fringe Benefits	57,494	65,302	70,311	94,391	112,852
TOTAL Expenditures	\$ 646,606	\$ 719,771	\$ 833,514	\$1,025,386	\$1,148,869
Total Personnel	20	20	23	27	29

¹Includes \$132,903 transferred from FY 83-84 revenues to balance FY 82-83 revenues and expenditures.

Source: South Carolina Budget and Control Board Budget Documents.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council found several problems which may affect the efficiency with which the Real Estate Commission operates. The Commission needs to develop a regular inspection schedule to ensure real estate offices are operating in accordance with state laws. In addition, using a professional testing service could benefit the Commission by reducing costs and increasing the defensibility of exams. The time sharing exam also needs to be revised. Further, developing written procedures would ensure greater consistency in agency operations. These and other areas are discussed below.

Inspections

The Real Estate Commission conducts inspections of real estate offices, time sharing projects, and property management complexes to ensure they are operating in accordance with state laws. Because the regulation of property managers was not established until 1986, the Commission is still identifying units handled by property managers, informing them of license requirements, and establishing an inspection format. However, the following problems were found with inspections of real estate offices and time sharing projects.

Real Estate Offices

The Real Estate Commission has not developed an inspection schedule and, therefore, has not regularly inspected the more than 4,500 real estate offices in the state. Further, inspection records have not been maintained to document the Commission's follow-up inspections when noncompliance with the law (discrepancy) is found. As a result, the Commission has not ensured adequate monitoring for compliance with the law.

By statute, the Commission is responsible for enforcing the laws governing real estate offices. For example, the Commission checks to ensure escrow funds are properly handled. To check for compliance, a Commission official stated that the Commission's goal is to inspect each office every two years and to conduct follow-up inspections when discrepancies are found. According to Commission officials, 14 counties had offices inspected from January 1986 through February 1988. However, an Audit Council sample of these inspection records indicated that only 9% of the offices in these counties (5.7% of all in-state real estate offices) were inspected during that period.

In more than two-thirds of the inspections where a discrepancy was found, the Council found no evidence that the Commission conducted a follow-up inspection to ensure the discrepancy was corrected. Without records of follow-up

inspections, the Commission cannot document that corrective action was taken to comply with the law.

Time Sharing Inspections

The Commission does not maintain any inspection records for the 97 in-state time sharing projects. Further, the Commission has not developed a time sharing inspection checklist for the compliance areas that should be reviewed by an inspector.

Governmental audit standards require that adequate documentation be maintained to evaluate an agency's operations. Without sufficient documentation of inspections conducted, the Audit Council could not determine if inspections of time sharing projects adequately evaluate compliance with the law. Further, without a compliance checklist, the Commission cannot assure its inspections review all areas where compliance with the law is required.

Out-of-State Offices

The Commission does not inspect the approximately 1,200 out-of-state real estate offices with a South Carolina license. According to a Commission official, these offices are dually licensed by this state and the state in which they are located. Approximately 99% of these offices are located in North Carolina and Georgia. The Real Estate Commission has the responsibility for ensuring compliance with the law. However, if these offices are not inspected, the Commission cannot determine if they are operating in accordance with the law.

Conclusion

The lack of personnel and an increase in the number of complaints received were cited as contributing to the Commission's inability to establish regular inspection schedules for in-state and out-of-state offices. However, two new staff members, whose duties include inspections, were hired in 1988.

RECOMMENDATIONS

THE REAL ESTATE COMMISSION SHOULD DEVELOP AN INSPECTION SCHEDULE TO ENSURE ADEQUATE MONITORING OF REAL ESTATE OFFICES' COMPLIANCE WITH STATE LAWS. THE COMMISSION SHOULD CONDUCT FOLLOW-UP INSPECTIONS OF OFFICES FOUND NOT IN COMPLIANCE WITH THE LAW AND MAINTAIN DOCUMENTATION OF CORRECTIVE ACTION TAKEN.

THE COMMISSION SHOULD DEVELOP A TIME SHARING INSPECTION CHECKLIST AND MAINTAIN COMPLETE RECORDS OF TIME SHARING INSPECTIONS.

THE COMMISSION SHOULD CONTACT STATES HAVING REAL ESTATE OFFICES LICENSED BY SOUTH CAROLINA TO ARRANGE AN EXCHANGE OF INSPECTION RESULTS FOR THESE DUALY LICENSED OFFICES. THE COMMISSION SHOULD CONSIDER INSPECTING THOSE OUT-OF-STATE OFFICES WITH A SOUTH CAROLINA LICENSE WHEN DISCREPANCIES ARE FOUND BY OTHER STATES' INSPECTIONS.

Professional Testing Service

State law may prohibit the Real Estate Commission from using a professional testing service to develop and administer real estate exams. The Commission has a test bank of approximately 3,400 questions, developed by a consultant, from which exams are drawn. Through the University of South Carolina (USC) which administers the exams and maintains the test bank, the Commission can analyze the questions to ensure their validity. However, using a professional testing service could reduce costs, improve test reliability and validity, and improve exam administration.

Section 40-57-110 of the South Carolina Code of Laws states that either the Real Estate Commission or an institution designated by the Commission must prepare and develop real estate exams. Section 40-57-150 authorizes the Commission to contract with an institution of higher learning in the state to

conduct examinations. Agency officials stated a professional testing service is not utilized because they interpret these laws as prohibiting the agency from using such services.

At least 38 states, including 6 southeastern states, use professional testing services to prepare and conduct their real estate exams. South Carolina's property manager and broker exams cost \$40, \$15 of which is paid to USC for exam administration. The sales exams cost \$65, however, this also includes the license fee. In FY 86-87, using a professional testing service could have reduced exam administration costs by approximately 37%, or \$127,000. This savings could have been passed on to applicants, reducing the exam fee by approximately \$15.

In addition, a professional testing service would improve assurances that exams meet professional testing standards and would assist the state in defending an exam if challenged in court. Also, reciprocity could be enhanced because individuals taking the national portion of the exam in another state could exempt that portion in South Carolina. Further, a professional testing service could enable the Commission to offer exams in multiple sites around the state. Currently, the tests are offered in Columbia only.

RECOMMENDATIONS

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-57-110 AND §40-57-150 OF THE SOUTH CAROLINA CODE OF LAWS TO ALLOW THE REAL ESTATE COMMISSION TO USE A PROFESSIONAL TESTING SERVICE TO DEVELOP AND ADMINISTER REAL ESTATE EXAMS.

THE REAL ESTATE COMMISSION SHOULD STUDY THE FEASIBILITY OF USING A PROFESSIONAL TESTING SERVICE FOR REAL ESTATE EXAMS.

Time Sharing Exam

The Real Estate Commission's time sharing exam does not meet professional testing standards. The Commission does not perform statistical analysis on the exam questions to determine their validity, and the exam has not been updated since 1979.

The time sharing exam was developed by Commission officials and representatives of the time sharing industry. The Commission's exams for salesmen, brokers, and property managers were based on questions developed by a consultant. For these exams, the Commission can perform statistical analysis to determine the validity of the questions. Further, to meet professional testing standards, exams should be based on up-to-date job analyses and designed according to documented test plans or specifications. Individual question analysis should be performed to review results and document test validity and reliability.

When an exam does not meet professional testing standards, the Commission cannot ensure the exam tests the applicant's competence and will be legally defensible, if challenged. Also, when exams are not updated periodically, the integrity of the exam cannot be ensured.

According to a Commission official, the time sharing exam has not been updated because the number of individuals taking the exam has been declining. Further, the agency has placed a higher priority on developing an exam for property managers since the passage in 1986 of statutes requiring the licensure and examination of these individuals.

RECOMMENDATION

THE REAL ESTATE COMMISSION SHOULD REVISE THE TIME SHARING EXAM TO ENSURE THAT IT MEETS PROFESSIONAL TESTING STANDARDS.

Policies and Procedures Manual

The Real Estate Commission has not adopted an agency-wide policies and procedures manual. Section 1-23-140 of the South Carolina Code of Laws requires that all state agencies adopt and make available to the public a written policy statement of all formal and informal procedures.

Written procedures provide a system of operating controls and are generally accepted as good management practice. The absence of guidelines for agency hearings, investigations, and enforcement of Commission statutes may result in inconsistent agency management. In addition, without written procedures, the Commission could violate the constitutional guarantee of equal protection under the law.

RECOMMENDATION

THE REAL ESTATE COMMISSION SHOULD DEVELOP A WRITTEN
POLICIES AND PROCEDURES MANUAL.

Education and Research Fund

The Real Estate Commission has not adopted formal procedures for the administration of Education and Research funds. Further, the Commission has awarded funds without requiring the submission of funding requests outlining how funds will be spent.

Section 40-57-150 of the South Carolina Code of Laws states the Commission may allocate up to \$5.00 from each licensee's renewal fee to an Education and Research Fund. Funds can be used for education and research to benefit licensees, to analyze and evaluate factors affecting real estate and to disseminate these results. In addition, Section 114.2 of the FY 87-88 Appropriation Act states that funds appropriated for research and educational projects shall be expended for the purpose intended.

From FY 84-85 through FY 86-87, the Commission awarded approximately \$200,000 to schools, foundations and individuals for educational and research purposes. While the Commission has developed guidelines establishing a format for requesting funds,

funds have been granted to institutions without a request being submitted. Further, these guidelines do not contain criteria for evaluating requests, procedures for assuring proper accountability of funds, or requirements for advertising the availability of funds. Good management practice requires procedures for the expenditure and accountability of funds. Without established procedures, there is less assurance that these funds are spent for their intended purpose and in the most beneficial manner.

RECOMMENDATIONS

THE REAL ESTATE COMMISSION SHOULD REVISE GUIDELINES FOR EDUCATION AND RESEARCH FUNDS TO INCLUDE CRITERIA FOR EVALUATING REQUESTS AND REQUIREMENTS FOR ENSURING ACCOUNTABILITY OF FUNDS AND FOR ADVERTISING THEIR AVAILABILITY.

THE COMMISSION SHOULD ENSURE INFORMATION ON FUNDING REQUESTS IS SUBMITTED IN ACCORDANCE WITH ESTABLISHED GUIDELINES.

Biennial License Renewal

Section 40-57-160 of the South Carolina Code of Laws and State Regulation 105-23 require the Real Estate Commission to renew all licenses annually. However, biennial renewal could save the Commission an estimated \$15,675 in administrative costs every two years. It could also generate approximately \$74,000 in interest revenue for the state each biennium. This would accrue from the extra revenue collected in license fees earning interest for 12 additional months.

Thirty-one states, including five southeastern states, have renewal periods of two or more years for real estate brokers and salesmen. Four states have three-year renewal periods and two states, including Georgia, have four-year renewal periods.

Commission officials expressed concern about the loss of contact with licensees and the increase in fees associated with paying renewal for two years instead of one. Renewal fees under biennial licensure would range from \$50 for salesmen to \$100 for nonresident brokers.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING
§40-57-160 OF THE SOUTH CAROLINA CODE OF LAWS TO ALLOW
FOR BIENNIAL RENEWAL OF REAL ESTATE LICENSES.

Motor Vehicle Use

The Real Estate Commission has paid employees for using privately-owned vehicles (POVs) for agency travel when the use of a state vehicle would have been more economical. Further, the Commission has not always determined if a state vehicle is available and adequate before allowing employees to use POVs.

Each Appropriation Act since at least FY 82-83 has required employees to use the most economical mode of transportation when traveling on state business. During FY 86-87, the Commission reimbursed employees approximately \$22,000 for the use of POVs. This included two employees who each received more than \$4,400 for traveling more than 20,000 miles. According to an analysis by the Division of Motor Vehicle Management, assigning a state vehicle to an employee traveling more than 18,000 miles a year is more economical than paying reimbursement. In addition, Regulation 19-608 specifies agencies are to certify that a state vehicle is either unavailable or inadequate before POV reimbursement can be received. However, the Commission does not have a policy designed to enforce this requirement. By not using state vehicles when it is more economical, the Commission spends more on employee travel than necessary.

RECOMMENDATIONS

THE REAL ESTATE COMMISSION SHOULD CONSIDER PERMANENTLY LEASING ADDITIONAL VEHICLES FROM THE DIVISION OF MOTOR VEHICLE MANAGEMENT FOR USE BY COMMISSION EMPLOYEES WHO TRAVEL MORE THAN 18,000 MILES A YEAR.

THE COMMISSION SHOULD DEVELOP A WRITTEN POLICY REQUIRING EMPLOYEES TO CERTIFY THAT A STATE VEHICLE IS UNAVAILABLE OR INADEQUATE BEFORE PAYING REIMBURSEMENT FOR THE USE OF PERSONAL VEHICLES.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

Public participation in the Real Estate Commission is provided by two public Commission members. These members were added to the Commission in 1978. In addition, Commission meetings are open to the public. These meetings are generally held at the Commission's offices. However, since July 1985, six meetings were held out-of-state at real estate conferences. Holding Commission meetings out of the state limits public access to these meetings and to the business conducted by the Commission. The Commission should ensure that all meetings are accessible to the general public.

The Commission posts notices of in-state meetings in the lobby of the Commission's offices. In addition, announcements of meetings are placed in the South Carolina Real Estate News which is sent primarily to real estate professionals. However, announcements of the location and time of Commission meetings are not published in the news media. The Commission should consider placing announcements of its meetings in newspapers across the state.

To encourage industry participation in Board activities, the Commission works closely with the South Carolina Association of

Realtors, a real estate trade association. The Commission co-sponsors real estate seminars with the Association and also publishes a monthly newsletter for its licensees.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Real Estate Commission does not duplicate the programs or functions of any other state, federal, or other agency or entity. The Commission is the only agency to license real estate brokers and salesmen, property managers, and time sharing salesmen. Brokers and salesmen who auction real estate must also have a license from the Auctioneer's Commission. However, no clear lines of authority exist between the Real Estate Commission and the State Board of Education regarding proprietary schools that teach real estate.

Proprietary Schools

Both the Real Estate Commission and the State Board of Education (Board) have statutory responsibilities relating to proprietary schools that teach real estate. However, the division of authority between the agencies is unclear. As a result, schools must receive approval from the Commission and be licensed by the Board before they can begin operation.

According to §40-57-100 of the South Carolina Code of Laws, schools teaching real estate courses, except universities, colleges, and technical schools, must be approved by the Commission. In addition, §59-59-30 authorizes the State Board of Education to license and set standards for approving all proprietary schools, including those teaching real estate. Standards shall include course offerings, adequate facilities, financial stability, competent personnel, and legitimate operating practices.

The Real Estate Commission has promulgated regulations to establish procedures for registering and approving real estate schools. However, the Commission has also promulgated regulations dealing with the approval of instructors, the operation of approved schools, school advertising, and student attendance. Further, the Commission has developed course specifications which must be met before a school can be approved. These regulations and requirements may exceed the Commission's authority to approve schools.

A 1987 Attorney General's Opinion on the Commission's school advertising regulation questions the validity of Commission regulations which may be construed as regulating real estate proprietary schools. The opinion concluded that the regulation is probably not valid and that any attempt to regulate the operations of these schools would be an "impermissible attempt to broaden the scope of the Commission's jurisdiction." This is because the authority to regulate real estate schools has been granted to the State Board of Education, while the authority to "approve" these schools is within the Commission's jurisdiction.

Neither the Commission nor the Board duplicates the functions of the other. The Board accepts the courses and instructors approved by the Commission, but retains authority over other aspects for licensing schools. However, because the statutes of both the Commission and the Board are unclear as to their areas of responsibility, real estate proprietary schools are subject to standards established by two different state agencies.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-57-100 OF THE SOUTH CAROLINA CODE OF LAWS TO CLARIFY THE REAL ESTATE COMMISSION'S RESPONSIBILITY WHEN APPROVING SCHOOLS OFFERING INSTRUCTION IN REAL ESTATE.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS, FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW, HAVE BEEN PROCESSED.

The Real Estate Commission handles complaints involving regular real estate transactions (including rental property) and time sharing projects. A review of complaints found the Commission is handling regular real estate complaints in an efficient manner. However, the agency can improve its handling of time sharing complaints.

In 1986 and 1987, the Commission received 622 time sharing complaints and 929 regular real estate complaints. An Audit Council sample of these complaints found that they deal largely with the following issues: (1) misrepresentation and/or fraud; (2) rental disputes; (3) earnest money disputes; and (4) buyers wanting releases from time sharing contracts.

Upon receiving a complaint, the Commission sends a letter to the complainant acknowledging receipt and a letter notifying the company of the complaint. When a response is received from the company, the complaint is assigned to an investigator. For regular real estate complaints, the Commission monitors them to ensure that they are acted upon within 30 days. Once a complaint is resolved, a letter is sent to the complainant informing him of the resolution.

However, the Commission does not have a system for monitoring the progress of time sharing complaints and does not send a letter of resolution to all complainants. Also, the sample of regular real estate complaints found the average time of resolution is approximately ten weeks. However, the average time of resolution cannot be calculated for time sharing complaints because the closure date is not recorded. The Commission should consider recording the date closed on the time sharing complaint log, sending a formal letter of resolution to

all complainants, and instituting a monitoring system for time sharing complaints.

According to Commission officials, the complaint system is scheduled to be automated in 1988. This will allow the Commission to track individuals and companies who have had complaints filed against them previously. It should also improve the efficiency of monitoring complaints.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Real Estate Commission is governed by state laws and regulations. Federal and local statutes do not directly address the Commission. As noted on page 63, the Commission has not complied with state law requiring written administrative procedures. The Audit Council found no other violations of state law. However, the Vacation Time Sharing Plans Act needs to be reviewed and updated.

Vacation Time Sharing Plans Act

The Vacation Time Sharing Plans Act, passed in 1978, needs to be reviewed and updated. Changes in the time sharing industry have taken place which have not been addressed in law. As a result, the time sharing industry may not be adequately regulated and the public may not be adequately protected.

Section 27-32-10 et seq. of the South Carolina Code of Laws authorizes the Commission to administer the Vacation Time Sharing Plans Act. The Act protects individuals who acquire the right to occupy vacation homes, apartments, or condominiums for specified periods of time each year over a number of years. The Act requires time sharing projects to register with the Commission and time sharing salesmen to be licensed. The Audit Council identified the following issues which indicate the need to review and update the time sharing laws.

Purchaser's Cancellation Period

Under the Act, the purchaser of a time sharing unit has four days to cancel the contract without penalty. This allows him a period of time to reconsider his purchase. South Carolina's cancellation period is the shortest among eight southeastern states. Other cancellation periods range from five to ten days. The short cancellation period may not allow the purchaser adequate time to fully consider the consequences of his purchase.

Resale of Time Sharing Units

Time sharing laws do not adequately address the reselling of individual time sharing units. Individuals reselling their units are not required to meet the cancellation or disclosure requirements of original sellers. Virginia requires individuals who resell time sharing units to provide each buyer with a certificate including such information as the time sharing association's budget, any capital expenditures anticipated for the next two years, and the fees charged time sharing owners for maintenance. Without this information, the buyer may not be fully aware of the total cost of buying a time sharing unit.

Time Sharing Sales License

The time sharing sales license may not be necessary. South Carolina and Alabama are the only southeastern states that issue a separate license for time sharing salesmen. Other states require a regular real estate license or do not license time sharing salesmen at all. With the growing resale market, Commission officials have expressed concern that time sharing salesmen are performing more complex transactions, like those of regular real estate salesmen, and may need the broader knowledge of an agent to adequately serve the public.

Multiple Ownership

The requirement that multiple ownership time sharing salesmen hold a regular real estate license is inconsistent with

the requirement that other time sharing salesmen must hold only a time sharing sales license. Multiple ownership is a form of time sharing in which there are 13 or fewer purchasers in a single unit. The registration requirements for both multiple ownership and other time sharing projects are the same, and most requirements of the law apply to both. Multiple ownership, however, can only be sold by regular real estate agents. As a result, multiple ownership salesmen do not contribute to and are not covered by the Time Sharing Recovery Fund. Further, requiring a regular real estate license to sell multiple ownership, when all other forms of time sharing require only a time sharing sales license, may unnecessarily restrict entry into the profession.

Completion Bond

The Act does not require a completion bond for time sharing projects under construction. Four of eight southeastern states require a completion bond to ensure that a project is completed if the developer goes bankrupt or is otherwise unable to complete the project. Without a completion bond, individuals purchasing time sharing units prior to completion could lose their investment if the project is not finished.

Registration Fees

The registration fee for time sharing projects, established by law, may not be adequate to cover the cost of regulation. The \$100 registration fee for in-state projects is the lowest among the seven southeastern states which charge a registration fee. The Audit Council conservatively estimates that the cost of processing an in-state registration is at least \$190, or 90% greater than the fee collected. When fees are not sufficient to cover the cost of regulation, other licensees must also bear the cost.

Conclusion

Commission officials state that experience in administering the law and changes in the time sharing industry indicate a need for updating the Act in these and other areas. Until the law is revised, the time sharing industry may not be adequately regulated and the public may not be adequately protected.

RECOMMENDATION

THE REAL ESTATE COMMISSION SHOULD CONDUCT A STUDY OF THE VACATION TIME SHARING PLANS ACT AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR CHANGES NEEDED. THE STUDY SHOULD REVIEW ALL ASPECTS OF TIME SHARING INCLUDING:

- (1) THE CANCELLATION PERIOD;
- (2) REQUIREMENTS FOR RESELLING TIME SHARING UNITS;
- (3) THE TIME SHARING SALES LICENSE;
- (4) MULTIPLE OWNERSHIP TIME SHARING;
- (5) COMPLETION BONDS; AND
- (6) REGISTRATION FEES.

APPENDICES

APPENDIX A

SOUTH CAROLINA REAL ESTATE COMMISSION

SCHEDULE OF FEES

	<u>Fees</u>
Examination Fees	
First Year Sales License ¹	\$ 50
Final Sales License ¹	50
Broker ¹	25
Property Manager ¹	25
Time Sharing Salesman	25
License Fees	
First Year Sales License ²	\$ -
Final Sales License ²	-
Broker or Property Manager	50
Broker In-Charge or Property Manager In-Charge	100
Time Sharing Salesman	125 ³
Renewal Fees	
Final Sales License	\$ 25
Broker or Property Manager	35
Broker In-charge or Property Manager In-charge	50
Time Sharing Salesman	75 ³
Registration Fees	
In-State Time Sharing Project	\$100
Out-of-State Time Sharing Project	250
Subdivided Lands ⁴	-
Registration Renewal Fees	
In-State Time Sharing Project	\$ 50
Out-of-State Time Sharing Project	100
Subdivided Lands	100

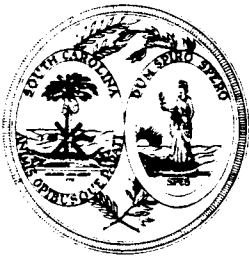
¹Excludes \$15 University of South Carolina test administration fee and \$10 credit report fee for first year salesmen, brokers and property managers.

²Included in exam fee.

³Includes \$25 recovery fund fee.

⁴Not to exceed \$500.

Source: South Carolina Real Estate Commission.



APPENDIX B

South Carolina Real Estate Commission

CAPITOL CENTER — AT&T BUILDING
1201 MAIN STREET, SUITE 1500
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 737-0700

MEMBERS

W. CALVIN WHITE, Chairman
MERYL D. BULWINKLE, Vice-Chairman
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FRANK A. BURGDORF
FRANK P. HAMMOND
ROBERT R. HEOS
ROY PEAVEY
JAMES EARL SPAIN
GERALD S. TOMPKINS

HENRY L. JOLLY
Commissioner
EMILY (PAT) McALISTER
Deputy Commissioner

June 16, 1988

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Re: Final comments pertaining to the South Carolina
Real Estate Commission Sunset Audit

Dear Mr. Schroeder:

We are in receipt of the final report of the Legislative Audit Council pertaining to the Sunset Review of the South Carolina Real Estate Commission. Enclosed, herewith, please find our comments regarding the conclusions and recommendations contained in the report.

On behalf of the members of the South Carolina Real Estate Commission and the staff of this agency, I would like to express our appreciation to the members of the Council's staff who conducted the Sunset Review. At all times they exhibited a high degree of professionalism while carrying out their job duties, and we commend them for their thorough report of the operation and administration of this Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Henry L. Jolly", is written over the typed name and title.

Henry L. Jolly
Commissioner

HLJ/nap

Enclosure

FINAL COMMENTS REGARDING

SUNSET AUDIT

1. Residency Requirement

As noted in the Findings, upon recommendation of the members of the South Carolina Real Estate Commission, the General Assembly recently passed legislation to delete the requirement that in order to obtain a real estate license, a person must be a resident of South Carolina.

2. Twenty-Five Mile Limit

At the monthly meeting of the South Carolina Real Estate Commission held on May 18, 1988, the Commission members voted in favor of amending regulations pertaining to property managers. The deletion of the limitation requiring property managers to reside within twenty-five miles from the principal property manager-in-charge's main or branch office is one of the changes the Commission approved. The Notice of Drafting Period pertaining to this amendment was published in the South Carolina State Register on May 27, 1988.

As noted in Item 1 above, the General Assembly recently deleted the requirement that in order to obtain a real estate license, a person must be a resident of South Carolina. Several regulations will need to be amended to address this change in the Real Estate License Law. It is anticipated that the elimination of the twenty-five mile limit pertaining to real estate salesmen will be among the amendments.

3. Vacation Time Sharing Recovery Fund and General Recovery Fund

The Commission will initiate a study to determine the need for implementation of a General Recovery Fund in South Carolina in order that the Council's recommendations may be given full consideration.

4. Real Estate Offices

The goal of inspecting each real estate office every two years may have proven to be an unrealistic objective. Emphasis has often needed to be placed on investigating consumer complaints in an effort to provide immediate response to the public need. In addition, Commission investigators were involved in six major, time-consuming investigations conducted in concert with other law enforcement agencies of alleged criminal activities involving licensees and/or persons defrauding the public through bogus real estate transactions. Furthermore, the implementation of the new property manager license during 1987 required an extensive amount of time to physically visit and identify multi-unit rental sites throughout the state which require licensure. However, the addition of two investigators and a revised inspection system, which has already been implemented, should assist dramatically in attaining the Commission's inspection goals.

In the past, follow up on offices with violations (discrepancies) in many instances was accomplished by brokers submitting written responses together with necessary data and/or documentation within the time frames for corrective action to be completed allowed at the time of citation. This information was reviewed for compliance then placed in a county folder with the other completed office inspection report sheets. However, necessary administrative procedural techniques were not utilized in annotating the activity cards when the correction was completed. This situation has been corrected and the proper administrative documentation will continue to be performed in the future. Furthermore, an Investigator's Handbook is being prepared and should be ready for publication shortly.

5. Time Share Inspections

A proposed time share inspection checklist combined together with a report is attached hereto and should be sufficient to meet any requirement that an inspection record be maintained. Furthermore, it will serve as a checklist for compliance areas regularly reviewed by on-site inspections of a time share resort. After completion of the inspection, the report, along with the attached copies of supporting documents, can be filed as a permanent record of the inspections as recommended by the Council.

Among the supporting documents to be attached will be copies of the trust account reconciliations, licensee checklist, contracts, schedules of inventory and notes made by the inspector. Together, these papers will be placed in a file separate from the Project Registration and complaint files and its entry into this file will be indexed in order that a list of inspections can be developed.

6. Out-of-State Offices

Inspection of out-of-state real estate offices that are licensed by this Commission is given low priority status because they are regulated and inspected on a regular basis by the regulatory authorities in the jurisdiction where they are located. This low priority status is particularly relevant if there are no consumer complaints filed against a non-resident licensee and there are outstanding complaints being investigated concerning resident licensees. The exchange of inspection results of dually licensed offices is a recommendation that will be taken under future consideration.

7. Professional Testing Service

The test bank currently utilized by the Commission was developed by a consultant who worked closely with members of the real estate industry, agency staff members, and real estate educators. The consultant was hired after requesting bids to develop the exam bank from all interested persons, including national testing services. The proposals submitted by other interested parties were prohibitively high. Consequently, Dr. Robert Gray was chosen to develop the test bank.

The fact that many other states use professional testing services to prepare and conduct their real estate examinations could be due to the lack of personnel, expertise or funds, not necessarily because the services are better than those currently utilized by this Commission. Information received from other states has to this date revealed extreme dissatisfaction with professional testing services. North Carolina recently returned to development and administration of its examination internally, and has one of the lowest fees in the Country.

Although the convenience of offering multiple test sites throughout the state may outweigh the benefits of a centrally located examination in large states, there has been no indication that examinees are inconvenienced by traveling to Columbia to such an extent that a central test location should be abandoned. By offering the examination in one central location, it is assured that the test is uniformly administered by experienced proctors. Furthermore, there is little chance of loss or damage to tests, as well as minimization of examination answers being compromised. However, the advantage to centralized testing which has met with the greatest approval of the real estate industry is that the procedure presently utilized insures the fastest grading and reporting of test scores.

If a professional testing service, or some other method of administration, can be proven to enhance reciprocity and improve assurances that exams meet professional testing standards, they should be considered to administer examinations. However, we are in agreement that a determination of this nature should not be made until a feasibility study concerning this matter is conducted.

8. Time Sharing Exam

We agree that the time sharing exam should be revised. As indicated in interviews held with Council auditors, due to the weaknesses evident in the examination, procedures for revising the question bank and analysis of questions have been developed, but have not been implemented because of the reasons noted in the Findings. These procedures are the same as those utilized for the administration of the sales, broker, and property manager examination.

9. Policies and Procedures Manual

In reference to the portion of the Findings which states there is a lack of an agency-wide written policies and procedure manual, please be advised that this agency utilizes the State Personnel Manual concerning all personnel matters. Furthermore, we post employee guidelines pertaining to Standards of Disciplinary Actions as approved by the Division of Human Resource Management, Grievance Procedures as approved by the State Personnel Division, etc. Likewise, there are specific procedures which are followed concerning complaints, inspections, investigations, and hearings. However, we agree that a comprehensive manual of the overall operations of the Commission should be prepared and is currently being developed.

10. Education and Research Fund

As noted in the Findings, the Commission currently has guidelines for establishing a format for requesting funds from the Education and Research Fund. Revision of these guidelines so as to include evaluation criteria, progression checks, and procedures for assuring proper accountability of funds will be reviewed and finalized for future use, in accordance with the Council's recommendations.

11. Biennial License Renewal

A point of consideration not addressed in the Findings is that due to the manner the Appropriations Act is worded, if a biennial license renewal is adopted, a special proviso will need to be made in order that the Commission will be able to defer revenue taken in during one year to a later year.

12. Motor Vehicle Use

The Council has recommended that the Commission should consider permanently leasing additional vehicles from the Division of Motor Vehicles Management for use of Commission staff who travel more than 18,000 miles per year. It is doubtful that employees will travel that extent in the future, because during FY86-87, the time period focused on by the Council, extensive employee travel was occasioned by unusual investigative involvement in six major criminal investigations in Horry, Charleston, and Beaufort counties. These investigations are now ended and the travel requirements of the staff should return to a more normal level, which would be less than the standard of 18,000 miles per year.

Likewise, one of the Commission employees referenced in the Findings as traveling more than 18,000 miles during FY86-87 elected to drive his POV to several out-of-state conferences and training seminars. Since he has now completed his investigative certification, this additional mileage is considered non-recurring.

13. Proprietary Schools

We agree that the General Assembly should consider amending Section 40-57-100 of the South Carolina Code of Laws (1976, as amended) to further clarify the Real Estate Commission's authority to regulate proprietary schools of real estate. As noted in the Council's Finding, the division of authority between the Real Estate Commission and the State Board of Education (Board) is unclear. Since a majority of the requirements of the Board for licensing of proprietary schools are substantially similar to the requirements a proprietary school of real estate must meet to be granted Commission approval, one agency could probably regulate these schools and eliminate any possible duplicative functions.

For years the Board has delegated the responsibility for reviewing course content to the Commission. Likewise, it has not licensed a proprietary school of real estate until it is approved by this agency, and has not failed to license a school which we have approved. Because of the Commission's expertise in the real estate field, we feel that authority to regulate proprietary schools of real estate should rest with the Real Estate Commission, which also appears to be the procedure utilized in a majority of jurisdictions.

14. Time Share Complaints

In its evaluation of the methods of handling time share complaints, the Council suggests consideration of a more detailed log being kept that shows a closure date of the complaint. Although this date could usually be approximately calculated from the contents of the file, this suggestion is a valid one for statistical research purposes. Beginning with 1988 complaints, a closure date will be included with the other information.

Another suggestion the Council recommends is to send a formal settlement letter. This recommendation is again sound advice and the investigative staff typically sends such letters when it is necessary. However, when the time share project directly communicates with the complainant or undertakes performance to correct the complainant's situation, such a letter serves little purpose. Many times a "quick memo" is sent in its place or a copy of the resort's response is sent. Therefore, evidence exists in the file indicating that a complainant has been notified of the resolution of his problem.

Many times, if not almost always, the staff is in contact with the complainant by telephone and by this method, the staff explains the resolution of the case directly to him. This method gives the complainant every opportunity to express his position and ask any questions that he may still have involving his case. Other times the complainant will settle the matter without consulting the investigative staff and further letters would again be superfluous.

15. Vacation Time Sharing Plan Act

We are pleased that the Council concurs with the Commission's recommendation that the Vacation Time Sharing Plan Act be thoroughly reviewed and updated. Likewise, we are also pleased that the Council's Findings focus on those portions of the Vacation Time Sharing Plan Act that the Commission has identified as areas of the law which need the particular attention of the General Assembly.

The study that the Council recommends should be conducted by the Commission concerning the Vacation Time Sharing Plan Act was begun in April. Attached is a copy of the checklist we are utilizing in reviewing the time share laws of other states. Please note the checklist focuses on those area of the statute included in the Council's recommendations for change.

There are two areas of the Findings dealing with the Vacation Time Sharing Plan Act which we feel need clarification. The Findings state that it is inconsistent that individuals must hold a regular real estate license in order to sell multiple ownership interests. We feel it is equally inconsistent to attempt to identify multiple ownership interests as a unique form of real estate ownership within the Vacation Time Sharing Plan Act when, in fact, it is merely time sharing.

Furthermore, although we are in agreement that an increase in the registration fee is necessary, it is our opinion that a \$90 increase is not sufficient to adequately cover the cost of regulation. Currently, we have completed our review of the time share laws of eight other jurisdictions and, as is reflected below, their registration fees all exceed the conservative figure referenced in the Council's Findings.

Alabama	\$500
Arkansas	\$300 plus \$5 for each 25 intervals
Arizona	\$ 20 per time share interest, not to exceed \$1,000
Florida	\$ 1 per unit week
Georgia	50¢ per time share interest, but not less than \$300
North Carolina	\$1,000
South Dakota	\$ 25 per unit, not to exceed \$1,000
Tennessee	\$500

Final points of consideration that the Commission feels should also be addressed in the Council's recommendation regarding the Vacation Time Sharing Plan Act are that registration renewal fees should be increased and the statute should be amended in order to provide that all registrations expire on the same date each year. We believe if all registrations expired on one date, in the same manner as real estate licenses, the administrative costs associated with renewals would be decreased and efficiency of administration increased.

TIMESHARE INSPECTION REPORT

INVESTIGATOR: _____ DATE: _____
 RESORT: _____ FILE # _____
 BROKER-IN-CHARGE: _____
 ADDRESS: _____
 TELEPHONES: _____

CHECK ITEMS REVIEWED.

_____ 1. LICENSE CHECK YES NO

Correct Data on Broker's License _____
 Compared to Printer Printout _____
 Are They In Public View ? _____
 Is Sign In Public View ? _____

_____ 2. FOUR DAY ESCROW ACCOUNT

Reconciliation Attached _____
 Check Of Timely Deposits _____
 Check Of Timely Withdrawals _____

Present Balance Of Account : \$ _____
 Present Account Liability : \$ _____
 Shortage/Overage : \$ _____

BANK'S NAME: _____ ACCOUNT NAME: _____
 ACCOUNT NUMBER: _____ SIGNATOR: _____

_____ 3. PERMANENT ESCROW

Balance In The Account : \$ _____
 Present Account Liability : \$ _____
 Shortage/Overage : \$ _____

BANK'S NAME: _____ ACCOUNT NAME: _____
 ACCOUNT NUMBER: _____ SIGNATOR: _____

_____ 4. SALES CONTRACTS (attach copy) YES NO

Check For Unlicensed Salesmen _____
 Check For Rescission Language _____
 Spot Check Execution _____

_____ 5. INVENTORY

Check On Double Sales _____
 Check On Sales Of Unregistered Units _____
 Balanced _____
 Percent Sold Out : _____%

_____ 6. COMPLAINT INVESTIGATIONS

Number Of Complaints Outstanding : _____
 Number Of Complaints Resolved : _____

_____ 7. INVESTIGATIONS, INTERVIEWS, RESEARCH

Re: _____

1. Definitions
 - a. Seller
 - b. Purchaser
 - c. Multiple Ownership
2. Registration Fees
3. Rescission Period
4. Escrow Provisions
 - a. Rescission Escrow
 - b. Encumbrance Escrow
 - c. Escrow for completion of construction
 - d. Bonds in lieu of escrow
 - e. Unit week or multiple interest release provisions
5. Advertising
6. Time Share License
 - a. Education requirements
7. Resales
8. Recovery Fund
9. Miscellaneous Comments

LICENSING BOARD FOR CONTRACTORS

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	88
<u>BACKGROUND</u>	89
<u>SUNSET ISSUES AND FINDINGS</u>	90
(1) EFFECTS OF REGULATION.....	90
Restrictive Licensing Laws.....	90
Annual Bidder's License.....	92
Licensure of Fire Sprinkler and Burglar Alarm Contractors.....	93
(2) IMPACTS OF DEREGULATION.....	94
(3) ADMINISTRATIVE COSTS.....	95
Board Revenues.....	96
(4) EFFICIENCY OF ADMINISTRATION.....	97
Board Examinations.....	98
Biennial Licensure.....	101
Use of Privately-Owned Vehicles.....	102
(5) PUBLIC PARTICIPATION.....	103
Public Membership on the Board.....	104
(6) DUPLICATION OF SERVICES.....	105
Regulation of Highway Contractors.....	106
Licensure of Well Drilling Contractors.....	107
(7) HANDLING OF COMPLAINTS.....	108
Prosecution of Unlicensed Contractors.....	110
Award of Contracts to Unlicensed Contractors.....	111
(8) COMPLIANCE WITH THE LAW.....	112
Regulations for License Classifications.....	112

TABLE OF CONTENTS (CONTINUED)

	<u>Page</u>
<u>APPENDICES</u>	115
A - Schedule of Fees.....	116
B - Board Comments.....	117

INTRODUCTION

After reviewing the laws and operations of the Licensing Board for Contractors, the Legislative Audit Council has determined that there is a public need for the regulation of contractors, and that the Board should be continued. In most areas, the Board has operated efficiently. However, improvements are needed in the Board's examinations and in the administration of penalties for licensing law violations. In addition, the General Assembly may wish to consider amending some laws which are restrictive or which result in inefficiencies or duplication between the Board and other agencies.

BACKGROUND

The Licensing Board for Contractors was established in 1936 to license and regulate general contractors. In 1956, the statute was amended to add regulation of mechanical contractors.

Section 40-11-10 of the South Carolina Code of Laws defines a general contractor as one who undertakes or bids on any construction project valued at \$30,000 or more. A mechanical contractor is one who undertakes or bids on any plumbing, heating, air conditioning, lightning protection, or electrical work valued at \$17,500 or more. Those contractors meeting these definitions are regulated and licensed by the Board. The Board also issues licenses to all fire sprinkler and burglar alarm contractors.

By law, the Board consists of two public members and five contractors. The Governor appoints contractors to represent each of the following construction classifications: building, public utilities, highways, electrical work, and heating, air conditioning, or plumbing.

The Board examines, licenses, and disciplines contractors. It receives and investigates complaints and holds disciplinary hearings. In addition to general and mechanical contractors' licenses, the Board issues a bidder's license. In 1987, more than 6,300 general and mechanical contractors were licensed by the Board. The Board also licensed 57 fire sprinkler contractors and 162 burglar alarm contractors.

In addition to South Carolina, 24 states regulate contractors. Requirements for licensure vary among these states.

SUNSET ISSUES AND FINDINGS

(1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Licensing Board for Contractors does not regulate the fees charged by contractors for their services and, thus, does not have a direct impact on consumer prices. Licensure fees and the costs of obtaining financial statements and insurance are costs of regulation that may be passed on indirectly to consumers. However, it is unlikely that they have a significant effect on the price of contracting services. Regulation of the industry may also increase the prices consumers pay for contracting services by creating barriers to entry into the profession, thus reducing competition.

The Audit Council identified some laws which may restrict competition and unnecessarily increase costs to contractors. As a result, the costs of contractors' services may be increased. Laws requiring contractors to be licensed prior to bidding are in conflict with some federal regulations and may cause projects in the state to lose federal funding. The annual bidder's license required for general and mechanical contractors is, in effect, an additional tax imposed on contractors. Also, the regulation of fire sprinkler and burglar alarm contractors required by two laws increases administrative costs. These problems are discussed below.

Restrictive Licensing Laws

State laws requiring contractors to be licensed before bidding on a project are in conflict with some federal regulations and may restrict competition. As a result, projects in the state may lose federal funding.

Section 40-11-100 of the South Carolina Code of Laws requires individuals to obtain a license from the Licensing Board

for Contractors before engaging or offering to engage in general or mechanical contracting. Further, §40-11-300 makes it illegal to receive or consider a bid from an unlicensed individual (see p. 111).

Environmental Protection Agency (EPA) procurement regulations require that EPA-funded contracts be awarded to the lowest bidder in a manner that does not unduly restrict or eliminate competition. State laws requiring licensure prior to bidding are considered restrictive by EPA and can result in the cancellation of EPA funding. EPA officials state that an invitation to bid which requires licensure can properly allow a successful bidder to meet licensing requirements between the bid submission and the beginning of work. Federal Highway Administration regulations also consider requiring licensure before bidding restrictive. However, §40-11-300 exempts Highway Department contractors from this requirement.

The purpose of licensure is to protect public safety and welfare. However, unlicensed bidders do not pose a threat to public safety and could obtain a license before being awarded a contract. Some states, including North Carolina and Louisiana, exempt contractors bidding on federally funded projects from licensure prior to bidding, but require a license before the contract award.

The Board's licensing law restricts competition because it prevents persons who are otherwise qualified but unlicensed from bidding on projects. The law also restricts competition from out-of-state contractors who would not routinely work in the state and, therefore, may not be licensed. For example, the Board denied a license to an out-of-state contractor, who met all licensing requirements, because he submitted a bid prior to obtaining a license. The project on which he bid was funded, in part, by an EPA construction grant, and he was the lowest bidder. However, because the Board would not issue the contractor a license, the contract was awarded to another contractor whose bid was \$391,000 higher.

According to officials with the Department of Health and Environmental Control, the conflict between state licensing procedures for general contractors and federal regulations governing bidding may cause the state to lose up to \$23.5 million in annual EPA grants for the construction of wastewater treatment facilities.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-11-180 AND 40-11-300 OF THE SOUTH CAROLINA CODE OF LAWS TO ALLOW CONTRACTORS BIDDING ON FEDERALLY FUNDED PROJECTS TO BID WITHOUT A LICENSE AND TO REQUIRE LICENSURE BEFORE THE CONTRACT AWARD.

Annual Bidder's License

The annual bidder's license required for general and mechanical contractors does not serve a regulatory function. Instead, it is a tax on the contracting profession.

Section 40-11-200 of the South Carolina Code of Laws requires general and mechanical contractors to pay an annual bidder's license fee of \$120. This license is in addition to a license for general or mechanical contracting and requires only that the contractor be licensed in South Carolina. According to the Director of the Licensing Board for Contractors and five Board members, the purpose of the bidder's license is to raise revenue.

In the licensing process, an agency grants permission for an individual to engage in an occupation upon finding that the applicant has the competency required to ensure that public health, safety, and welfare are reasonably protected. Thus, requirements for entry into an occupation should be clearly related to safe practice, and irrelevant requirements should be eliminated.

The Audit Council could identify only one other state, North Carolina, that requires a bidder's license for contractors. In

North Carolina, the license is recognized as a tax and is administered by the Department of Revenue.

South Carolina contractors must obtain a license that has no relationship to their qualifications or competence to work in the profession. From FY 82-83 through FY 86-87, bidder's license fees collected by the Board comprised approximately 50% of the total revenues collected; bidder's license fees in FY 86-87 amounted to \$430,100. Because the Board has collected revenues far in excess of its expenses (see p. 96), deletion of the bidder's license requirement would not prevent the Board from paying expenses from other fees collected.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER WHETHER THE BIDDER'S LICENSE IS AN APPROPRIATE LICENSURE REQUIREMENT FOR CONTRACTORS.

Licensure of Fire Sprinkler and Burglar Alarm Contractors

Fire sprinkler and burglar alarm contractors are required to obtain two licenses to undertake projects valued at \$30,000 or more. Under the Fire Protection Sprinkler Systems Act of 1985, all fire sprinkler contractors are required to be licensed by the Licensing Board for Contractors. A technical competency exam and comprehensive liability insurance are required for this license. All burglar alarm contractors are required to be licensed by the Board under the Regulation of Burglar Alarm System Businesses Act of 1986. This license also requires a competency exam and liability insurance. However, a separate license with additional requirements is required by the Board for both fire sprinkler and burglar alarm contractors who undertake projects valued at \$30,000 or more.

Requiring two licenses for general contractors in these areas results in their completing two sets of application forms and paying two license fees. General contractors must pay \$250 for either the burglar alarm or fire sprinkler license and \$110

for the general contractor's specialty license. Further, administrative costs to the Board are increased when two licenses are required.

Government regulation should protect the public without significantly increasing costs to the regulated industry. Provisions under the law should also ensure the efficient administration of regulatory requirements for all contractors.

Two licenses are now required in these specialties because the Board's law was not changed when the new laws were passed. Further, the new laws did not exempt these contractors from previous requirements for general contractors.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-11-340 OF THE SOUTH CAROLINA CODE OF LAWS TO EXEMPT FIRE SPRINKLER AND BURGLAR ALARM CONTRACTORS FROM LICENSURE AS GENERAL CONTRACTORS.

(2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Licensing Board for Contractors' regulatory functions include testing, licensing, and disciplining general and mechanical contractors. Complete deregulation of the industry would remove barriers to entry, resulting in increased competition and lower prices for contracting services. However, the Board is needed to ensure that persons presenting themselves as general and mechanical contractors are qualified to practice.

In the absence of regulation, unqualified persons may engage in contracting, posing some risk to public safety and welfare. For example, an improperly constructed building could collapse or faulty electrical work could cause a fire, resulting in injuries. Further, deregulation may increase costs to consumers who seek relief for damages from contractors.

Deregulation would not reduce the state's operating costs because revenues collected by the Board from license fees cover Board expenses.

Continuing regulation of contractors is in the best interest of the public because it provides greater assurance of qualified practitioners. Further, deregulation of contractors may endanger public safety and welfare and contribute to increased economic losses for consumers.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Licensing Board for Contractors collects revenues from license and license renewal fees that far exceed expenditures necessary for administrative functions (see p. 96). Excess revenues are retained in the state's General Fund. From FY 82-83 through FY 86-87, Board revenues increased from \$660,599 to \$863,820, while expenditures increased from \$186,256 to \$276,924 (see Table 1).

The Board has a staff of ten full-time employees, including two new positions added in FY 87-88. According to the agency director, additional staff were needed because of a continuing increase in the number of licensees and the Board's responsibility for administering new programs required for burglar alarm and fire sprinkler contractors (see p. 93). Personal services and employee benefits comprised 60% of the Board's expenditures in FY 86-87.

TABLE 1
SOUTH CAROLINA STATE LICENSING BOARD FOR CONTRACTORS
SOURCE OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>
License/Examination Fees	\$660,599	\$699,611	\$745,643	\$807,828	\$863,820
TOTAL Revenues	<u>\$660,599</u>	<u>\$699,611</u>	<u>\$745,643</u>	<u>\$807,828</u>	<u>\$863,820</u>
<u>Expenditures</u>					
Personal Services	\$ 99,463	\$109,970	\$121,927	\$132,400	\$138,360
Other Operating Expenses	69,127	68,855	91,025	92,323	110,190
Employee Benefits	17,666	20,349	23,764	27,136	28,374
Nonrecurring Appropriations	-	-	-	36,222	-
TOTAL Expenditures	<u>\$186,256</u>	<u>\$199,174</u>	<u>\$236,716</u>	<u>\$288,081</u>	<u>\$276,924</u>

Source: South Carolina Budget and Control Board Budget Documents, FY 83-84 through FY 87-88.

Board Revenues

The Licensing Board for Contractors collects revenues that far exceed expenses necessary to regulate the contracting profession. From FY 82-83 through FY 86-87, the Board's revenues were 2.8 to 3.5 times greater than expenditures. Further, the Board's fees were increased by the General Assembly for FY 87-88. For example, license and license renewal fees increased from \$60 to \$110, an 83% increase (see p. 116). Board revenues are estimated to be \$1.2 million for FY 87-88, while expenses are projected to be \$333,000.

The excess revenues collected by the Board exceed those collected by other South Carolina occupational and professional licensing boards. For FY 85-86 and FY 86-87, the revenue collected by 37 occupational and professional licensing boards, including the Contractors Board, exceeded expenditures by an average of \$30,300 per year. However, the Licensing Board for Contractors' revenues exceeded its expenditures by more than \$1.1 million for the two years, nearly twice the excess revenue of the board with the next highest amount.

State regulation of professions and occupations has traditionally been financed from fees imposed on the regulated group. The amount of revenue collected by a board has often shown a close relationship to board expenditures. Further, Section 129.41 of the FY 87-88 Appropriation Act requires professional and occupational licensing agencies to generate revenues equal to 115% of their appropriations. This requirement indicates the General Assembly's intent for these types of agencies to cover their direct and indirect costs.

However, contractors who pay fees administered by the Board are paying more than the amount required to regulate the profession. They are, in effect, paying a general tax for FY 87-88 in an amount estimated at \$817,000, or approximately \$127 per contractor.

All Board fees, except one exam fee, are set by the General Assembly and have traditionally been in excess of the amount required to administer the Board's regulatory functions. The Board did not request the FY 87-88 increase in fees.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER WHETHER CURRENT FEES IMPOSED ON CONTRACTORS ARE IN ACCORD WITH LEGISLATIVE INTENT REGARDING PROFESSIONAL AND OCCUPATIONAL LICENSING AGENCIES.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Licensing Board for Contractors has implemented many recommendations made in the Audit Council's 1982 review of the Board. As a result, the Board has improved hiring procedures, complaint handling and record keeping, exam administration, and documentation of travel expenses. In addition, the Board has implemented a computer system, improving efficiency in the licensing and license renewal processes.

However, problems with the Board's exams lessen the assurance that contractors' skills are tested in a consistent and equitable manner. Also, biennial licensure of contractors would result in savings and additional revenue to the state. Further, by exclusively using private vehicles, the Board spends more for travel than necessary. These issues are discussed below.

Board Examinations

The Licensing Board for Contractors administers 2 exams for general and mechanical contractors on the South Carolina Code of Laws and 23 technical competency exams in different contracting classifications. A passing score on the required exam(s) is necessary for licensure. The Audit Council reviewed exam procedures and found no problems with exam administration. Further, the Board has corrected problems with exam administration identified in the Council's 1982 review.

However, problems exist with the exams which lessen guarantees that contractors' qualifications are tested in a consistent and equitable manner. These are discussed below.

Professional Testing Standards

Of the 25 exams administered by the Board, 18 do not meet professional testing standards. These exams comprised 65% of all exams administered in 1987. To meet professional standards, exams should be based on up-to-date job analyses and designed according to documented test plans or specifications. Item analyses should be performed to review results and document test validity and reliability.

Many of the exams not meeting these standards were developed, using various methods, by Board members or contractors, not by testing professionals. Georgia and Tennessee obtain their contractors' exams from professional testing services, which offer exams in all contracting fields. Florida utilizes professional testing consultants for its contractors' exams. When exams do not meet professional testing standards,

there is little assurance that they are fair to applicants or legally defensible, if challenged.

Difficulty of Exams

The Board's exams vary widely in pass/fail rates, indicating a lack of consistency in testing contractors' competencies. For example, from 1983 through 1987, seven technical exams had passing rates between 50% and 60%, while two exams had passing rates greater than 90%. Some exams are lengthy and require extensive practical applications. Others are brief and consist entirely of short answer questions.

Exams are used in the licensing process to identify applicants who have the knowledge and skills to perform at a minimum competency level without serious risk to the public. If the exams do not measure appropriate competencies, the public will not be adequately protected from incompetent contractors. However, if they are unnecessarily difficult, the Board artificially limits the supply of practitioners, resulting in higher prices for services.

Technical Exam Requirements

The Board does not administer a technical exam for 13 classifications of general contracting. Contractors in these classifications must pass only a general exam on the South Carolina Code of Laws. Regulation 29-5 requires the Board to conduct a written exam of all applicants to test their knowledge in the classification for which they have applied for licensure. However, in 1987, approximately 700 (16%) of the 4,427 licensed general contractors were licensed without completing a technical exam.

A Board official stated it is impossible to develop exams for some classifications which contain a diversity of contracting specialties. Further, he stated that if a contractor in a specialty is usually supervised by another contractor, a test is not as necessary. In addition, it is expensive to

develop tests for small numbers of applicants. However, the Board is not in compliance with its regulation, and inconsistency in testing may be unfair to applicants and the public.

Exams for Different Monetary Limits

All contractors are licensed in a specific category, according to the value of the projects they undertake. For example, the general contractors' categories limit a single contract to \$75,000, \$150,000, \$500,000 or unlimited. The Board administers different exams that are progressively more difficult for each monetary limit in the building and electrical classifications. However, the Board does not have separate exams for different monetary limits for other classifications.

The level of competency necessary to practice the occupation does not vary substantially according to the value of the project; therefore, one examination should be sufficient to measure a contractor's competency. The Board's practice results in inconsistent testing of contractors' qualifications and may result in unfair restrictions for some building and electrical contractors.

Conclusion

A Board official stated the Board is working to revise exams beginning with those considered most important. The Board contracted for professional building exams in 1986 and has used a professional testing service for four mechanical exams since July 1987. However, the official stated that using professionally developed tests for all classifications would be too expensive and would require additional appropriations.

RECOMMENDATIONS

THE LICENSING BOARD FOR CONTRACTORS SHOULD REVIEW ITS EXAMS AND PREPARE A PLAN TO ENSURE THAT ALL EXAMS MEET PROFESSIONAL TESTING STANDARDS AND ARE CONSISTENT AND FAIR TO APPLICANTS.

IF TECHNICAL COMPETENCY EXAMS ARE NOT NECESSARY FOR SOME CLASSIFICATIONS, THE BOARD SHOULD PROMULGATE REGULATIONS EXEMPTING APPLICANTS IN THOSE SPECIALTIES FROM TAKING SUCH EXAMS.

THE BOARD SHOULD ELIMINATE THE PRACTICE OF GIVING DIFFERENT EXAMS FOR DIFFERENT MONETARY LIMITS IN A SINGLE CONTRACTING CLASSIFICATION.

Biennial Licensure

Contractors are required to renew their licenses annually. The Licensing Board for Contractors could save \$6,396 in administrative costs and earn approximately \$72,527 in interest revenue for the state over two years by renewing licenses biennially. Interest revenue would result from collection of renewal fees for a two-year period rather than one (see Table 2).

TABLE 2

PROJECTED SAVINGS/REVENUES FROM BIENNIAL LICENSURE

Reduction in Supplies	\$ 2,329
Reduction in Postage	4,067
Revenue from Interest	<u>72,527</u>
TOTAL Savings/Revenues	<u>\$78,923</u>

Source: South Carolina Licensing Board for Contractors, based on FY 86-87 data.

Section 40-11-200 and §40-11-230 of the South Carolina Code of Laws require annual renewal of general and mechanical contractors' and bidders' licenses. However, four southeastern states (Virginia, Maryland, Georgia, and Florida) require contractors to renew licenses every two years. Officials in

Georgia, Maryland, and Virginia stated biennial license renewal for contractors has posed no danger to public safety or welfare.

In addition to administrative cost savings and interest earnings, the Board could save approximately 174 staff days in processing renewals every other year. This would allow the staff to perform other functions for the Board.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-11-200 AND §40-11-230 OF THE SOUTH CAROLINA CODE OF LAWS TO PERMIT BIENNIAL RENEWAL OF CONTRACTORS' LICENSES.

Use of Privately-Owned Vehicles

The Licensing Board for Contractors has exclusively used privately-owned vehicles for agency travel when the use of state vehicles would be more economical. Further, officials have not determined whether a state vehicle is available and adequate before using a privately-owned vehicle, and reimbursement has not always been paid at an accurate rate.

According to the Director, the Board's practice has been for employees to use their own vehicles for agency travel. During FY 86-87, Board employees were reimbursed approximately \$9,000 for vehicle use at the rate of 21 cents per mile. One employee received more than \$3,800 for traveling 18,300 miles.

Every Appropriation Act since at least FY 82-83 has required state employees to use the most economical mode of transportation when traveling on state business. According to an analysis by the Division of Motor Vehicle Management, assigning a state vehicle to an employee traveling more than 18,000 miles a year is more economical than paying reimbursement.

In addition, Regulation 19-608 specifies agencies are to certify that a state vehicle is either unavailable or inadequate before privately-owned vehicle reimbursement can be received. According to the FY 87-88 Appropriation Act, reimbursement for

the use of personal vehicles is paid at 21 cents a mile. However, if an employee uses a personal vehicle when a state vehicle is available, the reimbursement rate is 20 cents a mile. Because the Board does not ask whether state vehicles are available for Board travel, it cannot determine the correct rate.

By not using state vehicles when it is more economical, the Board spends more for employee travel than necessary. In addition, always reimbursing at 21 cents a mile results in employees receiving more reimbursement for personal vehicle use than allowed.

RECOMMENDATIONS

THE LICENSING BOARD FOR CONTRACTORS SHOULD CONSIDER LEASING AT LEAST ONE STATE VEHICLE FROM THE DIVISION OF MOTOR VEHICLE MANAGEMENT FOR BOARD EMPLOYEES' USE.

THE BOARD SHOULD ADOPT A POLICY REQUIRING CERTIFICATION THAT A STATE VEHICLE IS UNAVAILABLE OR INADEQUATE BEFORE REIMBURSING EMPLOYEES FOR PERSONAL VEHICLE USE.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

Since the Council's 1982 review of the Licensing Board for Contractors, the Board was expanded to include two public members. However, one public member is a former contractor, and a second public member has not been appointed (see p. 104).

The public's awareness of the Board is indicated by the number of complaints received by the Board from consumers (see p. 108). Board meetings are open to the public and the Board places announcements of its meetings in nine state newspapers. However, the public has not actively participated in Board activities or attended Board meetings.

The Board works closely with contractors' trade associations, including the Association for General Contractors and the Mechanical Contractors' Association. The Board sends notices of proposed regulations and legislation to these associations for comment. It also publishes information for contractors in the trade association magazines.

Public Membership on the Board

The Licensing Board for Contractors does not have adequate representation of the public. One public member is a former contractor, and a second public member has never been appointed.

Section 40-11-20 of the South Carolina Code of Laws provides that the Governor appoint two consumer Board members from the general public. In 1983, the Board member representing public utility contracting resigned because he was no longer actively engaged in the profession. The individual was then appointed as a consumer member at the recommendation of the Board. In 1985, the Board recommended another former member, who had represented highway contractors, for appointment to the Board as a consumer member. However, the appointment was not made and the seat has been vacant for four years. According to Board members, former members have been recommended for appointment because of their experience and knowledge of Board operations.

Public members are appointed to regulatory boards to ensure public input in board activities and provide an additional perspective in board decision making. Although state law does not prohibit former contractors from appointment as public members, this practice raises a question as to whether true public membership is provided. In Florida, two boards that regulate contractors require public members to be lay persons who are not, and have never been, members or practitioners of the regulated profession or of a closely related profession.

When former licensees of the profession are allowed to serve as public members on the Board and when public members are not appointed, public participation in policy making is limited.

RECOMMENDATIONS

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-11-20 OF THE SOUTH CAROLINA CODE OF LAWS TO PROHIBIT FORMER CONTRACTORS FROM SERVING ON THE LICENSING BOARD FOR CONTRACTORS AS PUBLIC OR CONSUMER MEMBERS.

VACANCIES ON THE BOARD SHOULD BE FILLED AS QUICKLY AS POSSIBLE.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Licensing Board for Contractors does not duplicate the services, functions, or programs of other federal or local agencies. However, duplication exists between the Board and the Department of Highways and Public Transportation (DHPT). The Board requires highway general contractors bidding on or undertaking DHPT projects and private highway projects to meet all Board licensing requirements in addition to DHPT prequalification requirements. Further, some duplication exists between the Contractors Board and the Board of Certification of Environmental Systems Operators. Well drillers who undertake projects valued at \$30,000 or more are licensed by both boards. These issues are discussed below.

In its 1982 review, the Audit Council found overlapping responsibilities between the Board and the Residential Home Builders Commission in regulating home builders. The duplication was eliminated in 1983 when legislation was passed exempting general contractors from licensure by the Residential Home Builders Commission. This law made the Commission the sole licensing authority for persons engaging in home building only. The Contractors Board discontinued renewing restricted general contractors' licenses for home builders in 1984.

Regulation of Highway Contractors

State laws require highway contractors to be regulated by the Department of Highways and Public Transportation (DHPT) and the Licensing Board for Contractors. The Board's interpretation of these laws results in duplicative requirements for some highway contractors.

Regulation 63-300 requires persons bidding on DHPT projects to meet the Department's prequalification requirements. These include a financial statement, experience, available equipment and references. DHPT contractors must prequalify every two years. All highway contractors undertaking or bidding on projects valued at \$30,000 or more are required to be licensed by the Licensing Board for Contractors. An applicant must pass a technical competency exam and provide a financial statement, references, experience and evidence of bondability.

Section 40-11-150 of the South Carolina Code of Laws states that the Board shall issue a license as a matter of right to contractors who have been approved to bid on DHPT projects. These contractors are exempted from Board licensure requirements, but must purchase the contractor's license prior to a contract award. However, the Board interprets the law to limit DHPT contractors who have not met Board requirements to working on DHPT projects only.

As a result, DHPT contractors who undertake private highway projects must also meet the Board's requirements, which are duplicative. In addition, DHPT prequalification requirements are more stringent than Board licensure requirements. For example, the Contractors Board requires a net worth of \$75,000 to qualify for a license to bid on any project exceeding \$500,000. However, DHPT requires contractors to have assets of at least 15% of the project amount. Projects frequently exceed \$10 million, requiring assets of at least \$1.5 million.

Most highway contractors complete the requirements of both agencies. As of March 1988, DHPT had 348 prequalified contractors and the Board licensed 523 highway contractors.

Only nine contractors had the contractor's license restricted to DHPT projects.

Government regulation should protect the public without significantly increasing costs and restrictions to the regulated industry. Provisions under the law should also ensure the efficient administration of regulatory requirements for contractors.

Requiring contractors prequalified by DHPT to complete Board licensure requirements is an unnecessary duplication and may not be authorized by law. This duplication also results in increased administrative costs to the state.

RECOMMENDATION

THE LICENSING BOARD FOR CONTRACTORS SHOULD NOT RESTRICT LICENSES ISSUED UNDER §40-11-150 OF THE SOUTH CAROLINA CODE OF LAWS TO DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION (DHPT) PROJECTS ONLY. INSTEAD, THESE CONTRACTORS SHOULD BE LICENSED IN THE CLASSIFICATION AND WITH THE BID LIMIT FOR WHICH THEY ARE PREQUALIFIED BY DHPT.

Licensure of Well Drilling Contractors

Well drilling contractors are required to obtain licenses from two agencies to undertake projects valued at \$30,000 or more. Under Act 459 of 1982 (§40-23-10 et seq. of the South Carolina Code of Laws), all well drillers are required to be licensed by the Board of Certification of Environmental Systems Operators. The Licensing Board for Contractors requires a separate license for well drillers who undertake projects valued at \$30,000 or more. The Board of Certification requires a technical competency exam, while the Contractors Board requires a general exam. Both boards review the experience of applicants, handle complaints, and can revoke licenses. As of March 1988, ten well drillers had general contractors' licenses.

The administration of the well drillers' licensing program by two agencies is inefficient and results in additional administrative costs to the state. Requiring two licenses for general contractors in well drilling also results in their completing two application forms, paying two license fees and passing two exams. General contractors must pay \$40 for a well driller's certificate and \$110 annually for the general contractor's license.

Government regulation should protect the public without significantly increasing costs to the regulated industry. Provisions under the law should also ensure the efficient administration of regulatory requirements for all contractors.

Two licenses are now required in this specialty because the contractors' law was not changed when Act 459 of 1982 was passed. Further, Act 459 did not exempt well drillers from licensure as general contractors. A Contractors Board official stated that the Board would have no objection to well drillers being regulated by another agency.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER EXEMPTING WELL DRILLERS FROM REGULATION BY THE LICENSING BOARD FOR CONTRACTORS.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS, FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW, HAVE BEEN PROCESSED.

The Licensing Board for Contractors processes complaints and violations efficiently and in a timely manner. From FY 84-85 through FY 86-87, the Board received and investigated 98 consumer complaints and 277 alleged contractor violations of licensing laws. In conjunction with these, 26 hearings were held.

The Board maintains central complaint and violation logs and keeps a file on each complaint and violation. Information contained in the files is generally complete and orderly. However, neither the log entries nor the complaint and violation files are numbered. Logs and files are kept in chronological order, filed by the name of the contractor. To access a file, one must look through files for the contractor's name. Also, it is not possible to determine from the logs how many complaints or violations have been registered without counting the entries. The Board may wish to consider instituting a numbering system to locate files and track the number of complaints more easily.

Disciplinary actions resulting from complaints and violations were handled consistently by the Board with the exception of bid rigging violations. The length of license suspensions for these violations has not been consistent. Since 1981, the Board has reviewed eight cases where licensees were found guilty of bid rigging by federal courts. Suspensions for these licensees ranged from seven days to a revocation with no ending date specified. When significant variations in disciplinary actions administered for the same offense exist, the Board's equity and fairness toward licensees may be questioned. While the Board should be allowed to consider the merits of each case, it might consider establishing minimal guidelines for disciplinary actions which would result in more equitable treatment for all licensees.

In addition, while disciplinary action has been generally consistent except in cases of bid rigging, the Board has not used its full authority to deter some violations of the law. The Board does not refer cases of unlicensed contractors to appropriate legal officials for prosecution and has not taken action to ensure that contracts are awarded to licensed contractors. These problems are discussed below.

Prosecution of Unlicensed Contractors

The Licensing Board for Contractors does not refer cases of unlicensed contractors who unlawfully practice, or attempt to practice, contracting to the appropriate legal officials for possible prosecution. As a result, the Board has not exercised its authority to deter unlicensed contractors who may endanger the safety of the public.

The Board is charged with enforcing the provisions of law regarding contractors. According to Regulation 29-15, the Board is required to review each case involving an unlicensed contractor and, if sufficient evidence is found, refer the case to the prosecuting attorney in the county where the violation occurred. Under the law, any person attempting to practice without a license is guilty of a misdemeanor.

From FY 84-85 through FY 86-87, the Board investigated 101 cases of unlicensed contractors unlawfully bidding or contracting. None of these cases was referred to a prosecutor. Instead, in 84 cases, the Board required the unlicensed contractor to withdraw his bid or withdraw from the job. In the remaining 17 cases, the contractor was allowed to complete the job because it was near completion, or the contractor obtained a license.

While the Board has taken some action to prevent unlicensed contractors from continuing to work on a project, no punitive action has been taken to deter the future occurrence of this practice. According to agency officials, the Board has not referred cases to the appropriate legal officials because it believes that the cases would not be brought to trial.

RECOMMENDATION

THE LICENSING BOARD FOR CONTRACTORS SHOULD REFER ALL CONFIRMED CASES OF CONTRACTORS PRACTICING WITHOUT A LICENSE TO THE PROSECUTING ATTORNEY IN THE COUNTY WHERE THE VIOLATION OCCURRED.

Award of Contracts to Unlicensed Contractors

The Licensing Board for Contractors has not taken action to ensure that only licensed contractors are awarded contracts and has not enforced the law which makes persons receiving and considering bids from unlicensed contractors guilty of a misdemeanor. Additionally, the Board has not promulgated regulations to ensure that contracts are not awarded to unlicensed contractors.

The Board is charged with enforcing the provisions of law regarding contractors. According to §40-11-300 of the South Carolina Code of Laws, receiving and considering bids from unlicensed contractors is a misdemeanor. However, this provision is not applicable to State Highway Department projects. According to Board members, it is difficult for a person receiving bids to determine if a contractor is licensed, particularly with bids received by telephone. Thus, it is not reasonable to bring punitive action against violators. A similar provision in North Carolina law was changed to make it unlawful for any architect or engineer to recommend the award of a contract to anyone not properly licensed.

From FY 84-85 through FY 86-87, the Board investigated 101 cases involving unlicensed contractors. In 59 (58%) cases, contracts were actually awarded to unlicensed persons. However, the Board has not taken action to penalize persons awarding contracts in these cases. Further, the Board has not notified the appropriate legal officials of any of these violations. While it is difficult to determine whether bidders are licensed before receiving their bids, the licensure of bidders can be verified prior to the contract award.

The Board has not used its authority to encourage compliance with the law to the extent possible, and no punitive actions are taken to deter future occurrences of this practice. As a result, the Board is not ensuring that construction jobs are undertaken by qualified contractors.

RECOMMENDATIONS

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-11-300 OF THE SOUTH CAROLINA CODE OF LAWS TO DEFINE AS A MISDEMEANOR ONLY THE AWARDED OF CONTRACTS TO UNLICENSED CONTRACTORS.

THE LICENSING BOARD FOR CONTRACTORS SHOULD NOTIFY THE APPROPRIATE LEGAL AUTHORITIES OF ALL CONFIRMED CASES OF PERSONS AWARDED CONTRACTS TO UNLICENSED CONTRACTORS.

THE LICENSING BOARD FOR CONTRACTORS SHOULD PROMULGATE REGULATIONS ESTABLISHING PROCEDURES TO MONITOR CONTRACT AWARDS TO UNLICENSED CONTRACTORS AND ENSURE APPROPRIATE LEGAL OFFICIALS ARE NOTIFIED OF VIOLATIONS.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Licensing Board for Contractors is governed by the South Carolina Code of Laws. The Audit Council found no violations of Board laws during its review. However, the Board has not complied with regulations concerning the administration of technical competency exams to applicants (see p. 99) and the referral of unlicensed contractors for prosecution (see p. 110). In addition, by not promulgating regulations when required, the Board has not complied with the South Carolina Administrative Procedures Act. This problem is discussed below.

Regulations for License Classifications

The Licensing Board for Contractors has enforced policies which apply to the general public without promulgating regulations. As a result, the Board has implemented policies without the effect of law.

By law, general contractors may obtain licenses in four classes: building, highway, public utilities, and specialty. Each classification, except the building class, has subclassifications in which a license can be obtained. Neither state statutes nor the rules and regulations of the Board list or define the general contractor's license subclassifications. Also, the Board's policy on limiting a contractor to three specialty subclassification licenses is not authorized in regulation or statute.

Further, mechanical contractors may obtain licenses in five classes: plumbing, electrical, heating, air conditioning, and lightning protection. However, Board publications list a sixth class, packaged equipment, for which the Board has not promulgated regulations. Regulation of the installation of packaged equipment could be provided as a subclassification under the heating and air conditioning classes since this license covers the installation of some types of heating and air conditioning equipment.

Section 1-23-10 of the South Carolina Code of Laws, a part of the Administrative Procedures Act (APA), defines a regulation as:

. . . an agency's statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.

This means that agency actions which affect the general public must be promulgated following APA requirements. These include giving notice of draft regulations in the State Register, allowing interested parties to comment on them, and providing for approval by the General Assembly.

Because the Board has not promulgated regulations on license classifications, it has excluded the General Assembly and the public from reviewing and commenting on its policies. Further, because these policies do not have the effect of law, the Board may not be able to enforce or defend the policies if challenged.

RECOMMENDATION

THE LICENSING BOARD FOR CONTRACTORS SHOULD PROMULGATE REGULATIONS TO IMPLEMENT ITS POLICIES FOR CONTRACTORS' LICENSE CLASSIFICATIONS IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT.

APPENDICES

APPENDIX A
LICENSING BOARD FOR CONTRACTORS
SCHEDULE OF FEES

	<u>Fees</u>
General Contractor's License/Renewal	\$110
Mechanical Contractor's License/Renewal	110
Bidder's License/Renewal	120
Extra Representative (for Exam)	60
Fire Protection Sprinkler Certificate	250
Fire Protection Sprinkler Renewal	100
Burglar Alarm Business License	250
Burglar Alarm Business Renewal	200

Source: South Carolina Licensing Board for Contractors.

APPENDIX B
State of South Carolina
Licensing Board for Contractors

1300 PICKENS STREET
P.O. BOX 5737
COLUMBIA, S.C. 29250
(803) 734-8954

June 20, 1988.

Mr. George L. Schroeder, Director
S. C. LEGISLATIVE AUDIT COUNCIL
620 N. C. N. B. Tower
Columbia SC 29201

Dear Mr. Schroeder:

The full membership of the South Carolina Licensing Board for Contractors has reviewed the audit report prepared by the Legislative Audit Council and would like to express our appreciation for the opportunity to respond to the findings and recommendations contained in the report.

Many of the recommendations are legislative matters and must be addressed by the General Assembly. The Board has no objections to changes in the statutes concerning the elimination of the Bidders License fee, the reduction of contractor fees, or the exemption of Fire Sprinkler Contractors, Burglar Alarm Businesses and Well Drillers from being licensed as General Contractors.

We also endorse the recommendation regarding public membership on the Board, but offer these comments on the conclusions of the audit pertaining to Board recommendations. Over the years the Board has referred numerous names of individuals to the Governor for consideration for Board appointments. These individuals have been from both the construction industry and the private sector, but the report mentions only those who were former Board members, excluding other recommendations that have been made.

The recommendations concerning travel policies have already been implemented and the mileage rate has been reduced to 20¢ per mile for use of private autos used on official State business.

In regard to adopting a numbering system for complaints and violations, a policy had already been under consideration prior to the audit and will be implemented within the next few months.

The Board also intends to amend the regulations to include the sub-classification of licenses and to address the matter of exempting certain applicants from taking a technical competency examination.

Mr. George L. Schroeder, Director
S. C. Legislative Audit Council

page 2.

The Board is constantly reviewing our exams and exploring ways of improving and upgrading them to a professional level. Beginning in July of 1988, our electrical exams will be furnished by a professional service and by the end of 1989, we estimate 78% of all exams administered by this Board will have been developed by a professional organization. The one area of disagreement on the examination issue involves different levels of examinations for different limitation groups. When our new electrical exams begin in July, 1988, building will be the only classification with different exams with different levels of difficulty. The Board intends to maintain this system of multi-exams for building as we believe an applicant for a license to construct high-rise office buildings should be tested more thoroughly than those applying for a license that would limit them to small one-story office buildings or convenience stores. We would also point out that the State of Florida, which the audit report mentions several times as a positive example, has two (2) levels of examinations for the building classification.

The Board has serious reservations and cannot support the recommendation to amend Sections 40-11-180 and 40-11-300 of the Code of Laws to allow contractors to bid on federally funded project prior to licensure. We believe this would cause more problems than it would solve because issuance of a license would not be automatic in the event of a successful bid. In some instances a contractor who is the low bidder could not qualify for a license, which would delay the award process past the grant deadline, thus requiring that the bidding be re-opened. As an example, in 1987-88, 254 applicants had their license fees forfeited because they could not qualify for a South Carolina Contractor's license. This change would also create a "loop hole" to allow a contractor to withdraw his bid, claiming he could not qualify for a license, thus causing additional expense to the owner and undue delays in the start of construction.

We are also opposed to biennial licensing of contractors because of the problem of unreported changes in the operations of licensees. All of the savings cited in the report would not be realized because some type of year end report from each licensee would be necessary to identify address changes, management changes, verify qualifying representatives, changes in styles of business and new company names. We would also need current financial statements from approximately one-third of our licensees each year. Obtaining and processing this information

Mr. George L. Schroeder, Director
S. C. Legislative Audit Council

page 3.

would require an expenditure that would nearly equal what we now spend on the renewal process. If biennial licensing was adopted, pro-rated fees would also be required, which would decrease the amount of revenue derived from new applicants.

The Board also takes exception to the findings and recommendations regarding the regulation of Highway contractors. While the Department of Highways and Public Transportation has some requirements that are more stringent, overall, we believe our requirements offer better protection to the private owner and general public. The financial requirements of the Highway Department are based on liquid assets while this Board's license limitations are determined by net worth. We also require a written technical examination which we believe allows us to better ascertain the qualifications of a contractor before he can enter into private grading and paving work in South Carolina.

While we cannot dispute the facts contained in the sections dealing with prosecutions and awards to unlicensed contractors, we offer the following information on our behalf. All unlicensed contractors have not been referred to the courts for prosecution in the past because the Board feels that requiring the contractor to withdraw from a job is a much harsher penalty than the maximum fine of \$500.00 that could be imposed by a court of law. Also, in addition to the manpower and money required to prosecute each case, we have found a reluctance on the part of county prosecutors to bring these cases to trial because of a low priority in the judicial system. We would also point out that of the 101 unlicensed contractors mentioned in the report, not one was a repeat offender, thus indicating that our handling of these cases was a deterrent factor in itself. We believe that 101 unlicensed contractors found operating in South Carolina during a two (2) year period is probably the lowest of any state with a state wide licensing requirement, thus strengthening our contention that our enforcement procedures are effective. However, in view of the criticism in the report, we intend to confer with the office of the Attorney General and adopt policies and procedures to refer these cases to the proper courts for prosecution.

The Board is reluctant to support the amending of Section 40-11-300 to define only the awarding of contracts to unlicensed contractors a misdemeanor, and deleting the receiving of bids as a violation. We believe this is a deterrent to receiving bids from unlicensed persons and would like to have this section

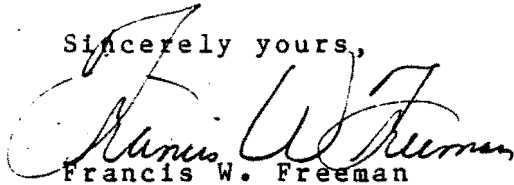
Mr. George L. Schroeder, Director
S. C. Legislative Audit Council

page 4.

remain intact to be used as in the past, at the discretion of the Board. The Board would not hesitate to prosecute someone under this statute, if they were a repeat offender or found to be in flagrant violation.

In conclusion, we believe the South Carolina Licensing Board for Contractors has made substantial progress in all areas since the last audit in 1982. This Board provides a vital function and is an important and integral part of the regulatory process of State government. The Director, staff, and current members of the Board are committed to correcting the inadequacies cited in this report and will continue to provide the citizens of South Carolina the best and most efficient service and protection possible.

Sincerely yours,



Francis W. Freeman
Chairman of the Board
South Carolina Licensing Board for Contractors

FWF/gb

RESIDENTIAL HOME BUILDERS COMMISSION

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	123
<u>BACKGROUND</u>	124
<u>SUNSET ISSUES AND FINDINGS</u>	125
(1) EFFECTS OF REGULATION.....	125
(2) IMPACTS OF DEREGULATION.....	125
(3) ADMINISTRATIVE COSTS.....	126
(4) EFFICIENCY OF ADMINISTRATION.....	127
Personnel Evaluations.....	127
Exam Statistics.....	128
(5) PUBLIC PARTICIPATION.....	128
(6) DUPLICATION OF SERVICES.....	129
(7) HANDLING OF COMPLAINTS.....	130
Administration of Complaint Files.....	130
Written Procedures.....	131
Penalties.....	132
(8) COMPLIANCE WITH THE LAW.....	133
Oath of Office.....	133
Minority Business Plans.....	134
Inconsistent Statute.....	134
<u>APPENDICES</u>	135
A - Schedule of Fees.....	136
B - Agency Comments.....	137

INTRODUCTION

After reviewing the laws and operations of the Residential Home Builders Commission, the Legislative Audit Council concludes that the Commission and regulation of residential home builders should be continued. Termination of the Commission would pose a threat to public safety and welfare. In most areas, the Commission has operated efficiently and effectively. However, improvements are needed in complaint administration and personnel evaluations.

BACKGROUND

The South Carolina Residential Home Builders Commission was established as an independent entity in 1974. Prior to this, residential home builders were licensed by the Licensing Board for Contractors. The Commission is now the sole licensing body for persons who engage exclusively in home building. A total of 20 states regulate residential home builders, and this number is increasing.

Residential home builders are defined as individuals who construct or improve residences or other structures not over three floors in height and, for apartments, not exceeding 16 units in size. To fall within the jurisdiction of the Commission, the cost of the builder's project must exceed \$10,000.

By law, the Commission is composed of four licensed home builders and three public members. The builder members must have at least five years experience in the field, and the public members cannot be engaged in residential home building. Members of the Commission are appointed by the Governor and serve staggered, four-year terms.

The Commission is responsible for examining, licensing, and disciplining home builders. The Commission is also empowered to promulgate rules and regulations, investigate complaints, and maintain a roster of licensees.

In March 1988, there were 5,052 licensed home builders in South Carolina. All licenses issued by the Commission must be renewed annually by July 1. The Commission employs a staff of 11.

SUNSET ISSUES AND FINDINGS

(1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The programs and functions of the Residential Home Builders Commission do not directly affect the costs of residential home building services. The Commission does not regulate the fees charged by home builders. Examination fees and annual license renewal fees are costs of regulation that may be passed on indirectly to consumers. However, it is not likely that these costs significantly affect the price of home construction or repair.

Regulation creates barriers to entry into the occupation and can reduce competition. Thus, fees charged by members of a regulated occupation may be higher than if it were unregulated.

(2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Residential Home Builders Commission is responsible for testing, licensing, and disciplining home builders in the state. Termination of the Board and deregulation of the industry would remove barriers to entry, resulting in increased competition and possible lower prices for home building services.. However, it would also remove state laws which ensure a system of checks and balances between home builders and homeowners.

Deregulation would eliminate examination requirements for testing the competency of home builders. It would also eliminate a mechanism for removing unqualified builders from the profession. As a result, the public would have less protection from unscrupulous, unsafe, and fraudulent practices by builders.

Therefore, the Audit Council recommends that the Commission and regulation of the industry be continued.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

To support its administrative costs, the Residential Home Builders Commission collects revenue through examination and license fees (see p. 136). From FY 83-84 through FY 86-87, the Commission's expenditures increased from \$275,793 to \$466,709, while revenues increased from \$387,897 to \$562,253 (see Table 1). During this four-year period, the Commission collected an average of \$121,433 a year more than it spent. These funds were retained in the state's General Fund.

The Commission has a staff of 11 full-time employees, headed by an Executive Director. In FY 86-87, salaries and fringe benefits totaled \$276,564, comprising 59% of the Commission's total expenditures.

TABLE 1
SOUTH CAROLINA RESIDENTIAL HOME BUILDERS COMMISSION
SOURCE OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>	<u>FY 87-88</u> (Estimated)
License Fees	\$329,380	\$368,135	\$404,115	\$434,208	\$491,969
Exam Fees	58,415	93,260	126,350	127,320	102,586
Sale of Equipment	-	-	-	206	-
Miscellaneous Income	102	308	503	519	308
TOTAL Revenues	<u>\$387,897</u>	<u>\$461,703</u>	<u>\$530,968</u>	<u>\$562,253</u>	<u>\$594,863</u>
<u>Expenditures</u>					
Personal Services	\$154,375	\$170,152	\$210,313	\$232,478	\$238,543
Other Operating Expenses	93,617	128,686	127,104	190,145	183,536
Employee Benefits	27,801	30,863	38,869	44,086	51,896
Nonrecurring Appropriations	-	2,108	6,491	-	-
TOTAL Expenditures	<u>\$275,793</u>	<u>\$331,809</u>	<u>\$382,777</u>	<u>\$466,709</u>	<u>\$473,975</u>

Source: South Carolina Budget and Control Board Budget Documents.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Residential Home Builders Commission is carrying out its statutory requirements in a generally efficient manner. Since the Audit Council's 1982 review, the Commission has increased its administrative efficiency by purchasing a computer system. The Commission has automated its complaint tracking system and administrative functions, including printing licenses and maintaining a roster of licensees. Consideration is being given to automating the grading of exams.

While the Commission grades exams and issues licenses quickly, it could improve its system of recording exam statistics. In addition, the Commission has not performed personnel evaluations as frequently as required.

Personnel Evaluations

The Residential Home Builders Commission has not conducted employee performance evaluations as required by state regulation. Only 4 (13%) of 32 performance evaluations required since 1984 had been completed. In addition, the evaluations performed did not comply with requirements of the Employee Performance Management System (EPMS).

State Regulation 19-702.04 requires agencies to formally evaluate employees at least once annually. The Commission's EPMS policy was approved by the Budget and Control Board's Division of Human Resource Management in October 1982 and revised in November 1986.

Under EPMS, the supervisor and the employee develop a performance plan which identifies the objectives to be accomplished during the review period and the criteria by which the employee's performance will be measured. At the end of the year, performance is evaluated on an EPMS evaluation form.

Without formal performance evaluations, supervisors cannot adequately assess the quality of an employee's work. Also, the justification for raises and promotions is not documented.

RECOMMENDATION

THE RESIDENTIAL HOME BUILDERS COMMISSION SHOULD ENSURE THAT ANNUAL PERFORMANCE EVALUATIONS ARE CONDUCTED FOR ALL EMPLOYEES, AS REQUIRED BY STATE REGULATION. THESE EVALUATIONS SHOULD BE COMPLETED USING EPMS FORMS.

Exam Statistics

The Audit Council found numerous errors in the manual log in which the Residential Home Builders Commission records the number of builders who have passed the licensure exam. The Commission Director stated that a manual system of recording exam data makes it difficult to obtain accurate statistics. For example, statistics cannot be compiled on the percentage of builders who have passed the exam after a first, second, or third attempt.

The Commission has obtained a computer to facilitate its administrative functions. The Audit Council suggests that the Commission automate its exam record-keeping.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

By statute, three of the seven members of the Residential Home Builders Commission are public members. According to Commissioners, the presence of public members helps ensure a balanced perspective when complaints are heard.

The Commission conducts four regularly scheduled meetings a year. The media is notified of these meetings, and written notice is posted in the lobby of the building in which the Commission is located. Other meetings are held approximately

every month. Announcements of these meetings are also posted in the lobby of the Commission's building.

In addition to Columbia listings, the Commission also has telephone listings in the two cities where investigators are stationed. To increase public access, these investigators have been provided with answering machines.

The Department of Consumer Affairs often receives complaints against home builders. It refers to the Commission all complaints against builders within the Commission's jurisdiction, thus increasing public awareness of the Commission's functions. Employees of the Commission maintain regular contact with the Residential Home Builders Association, providing an opportunity for communication between the industry and the agency. Public service announcements in the news media could further encourage public and industry participation in Commission activities.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Audit Council found no evidence that the Residential Home Builders Commission duplicates the services, functions or programs of other state or federal governmental bodies. The Commission is the only agency responsible for examining and licensing residential home builders.

At the time of the Audit Council's 1982 review of the Commission, 99 builders whose work was restricted to residential home building were licensed by the Licensing Board for Contractors. However, §40-59-140 of the South Carolina Code of Laws was amended to make the Commission the sole licensing board for persons engaged in home building only. Therefore, licensed residential home builders are no longer required to be licensed as general contractors.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS, FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW, HAVE BEEN PROCESSED.

From FY 84-85 through FY 86-87, the Residential Home Builders Commission closed files on 973 complaints filed against residential home builders. The Audit Council reviewed a sample of 120 of these cases and found the handling of these complaints was generally consistent. However, 16 (13%) files did not contain complete information. In addition, the Commission does not have sufficient written guidelines for resolving complaints and has limited penalties to invoke against builders whose work is substandard. These problems are discussed below.

Administration of Complaint Files

The Commission has not consistently documented complaint procedures and resolution. In 16 of 120 complaints (13%) against licensed and unlicensed home builders, the Audit Council could not evaluate the action taken by the Commission because the files did not contain sufficient information. For example, when cases are "administratively closed," the file does not contain sufficient information on the action taken or the reason for such action, and does not document that the home owner and builder were notified of the case's closure. In other files, the cost of the contract with unlicensed builders was not recorded, so the Audit Council could not determine the appropriate agency with jurisdiction over the case.¹

The Audit Council interviewed employees of the Commission to obtain the missing information. However, information based on

¹The Department of Consumer Affairs has jurisdiction over complaints against unlicensed home builders undertaking projects costing less than \$10,000. Cases against unlicensed builders for projects over \$10,000 may be prosecuted by the Attorney General's Office.

the recollection of employees may not be accurate or complete. In addition, without a complete written record of action taken, the Commission may not be protected in the event of legal challenges to its actions.

After the Council's review, the Commission Director developed a form to be placed in each complaint folder. If this form is used, each file will include the dates of the complaint, inspection(s) and closeout, as well as the reason for the closeout of the case. Requiring a standard information sheet for each file and a form letter for administrative closure of complaints will help ensure consistency and thoroughness of complaint handling. Commission staff's increased familiarity with the complaint tracking capabilities of their new computer will also help ensure efficient resolution of complaints.

RECOMMENDATION

THE RESIDENTIAL HOME BUILDERS COMMISSION SHOULD REQUIRE THAT WRITTEN INFORMATION ABOUT COMMISSION ACTIONS AND REASONS FOR ACTION BE INCLUDED IN ALL COMPLAINT FILES. FURTHER, THE BUILDER AND OWNER SHOULD BE INFORMED, IN WRITING, WHEN THEIR CASE IS CLOSED BY THE COMMISSION.

Written Procedures

The Commission's procedures for resolving complaints against licensed home builders are clear. However, written procedures do not adequately specify the action to be taken in complaints against builders who were never licensed or whose licenses have not been renewed. Without such procedures, some complaints have not been handled consistently.

For example, some complaints against unlicensed builders involving jobs over \$10,000 were not referred to the Attorney General's Office. The Commission has used its discretion in deciding whether to refer these cases. However, the Attorney

General's Office has stated that it is a better policy to refer all such cases.

Written policies also do not fully cover the circumstances under which the Commission will accept a complaint and inspect a house. For example, investigations were made in some, but not all, cases of complaints against unlicensed builders. Employees of the Commission have stated different guidelines for deciding whether to investigate these cases, including the seriousness of the complaint and the case load of the investigator.

RECOMMENDATION

THE RESIDENTIAL HOME BUILDERS COMMISSION SHOULD DEVELOP DETAILED WRITTEN PROCEDURES CONCERNING INSPECTIONS AND REFERRALS OF UNLICENSED BUILDERS TO THE ATTORNEY GENERAL'S OFFICE.

Penalties

The Commission does not have the authority to impose penalties less severe than license revocation. The Commission has expressed dissatisfaction with this limitation on its authority over substandard builders. Although the Commission closed 973 complaints from FY 84-85 through FY 86-87, only 33 licenses were revoked. The Commission is reluctant to revoke licenses when a problem is not serious enough to deny a builder's livelihood. In addition, when the builder's license is revoked, the complaint cannot be resolved because the builder cannot return to the job to make the necessary repairs.

When the Commission is reluctant to revoke a license and has no authority to impose other penalties, it can only order builders to do the work for which they have already contracted. Consequently, builders have less incentive to perform adequately.

The South Carolina Board of Registration for Professional Engineers and Land Surveyors is empowered to levy civil fines and may reprimand, suspend or refuse to renew the certificates of

registration of its registrants. If the Commission had a wider range of options in disciplining builders, the public would be better protected against negligent or incompetent home builders.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING THE LAW TO ALLOW THE RESIDENTIAL HOME BUILDERS COMMISSION TO IMPOSE PENALTIES OTHER THAN LICENSE REVOCATION.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Residential Home Builders Commission was created by, and is subject to, state laws and regulations. Federal and local statutes and regulations do not directly affect the Commission. The Audit Council found that the Commission has complied with applicable state laws, with two exceptions. In another area, the law governing the Commission is inconsistent. These problems are discussed below.

Oath of Office

Five of the seven Residential Home Builders Commission members have not filed an oath of office as required by law. Section 40-59-20 of the South Carolina Code of Laws states that each Commission member must file, with the Secretary of State, a written oath to perform properly the duties of his office. Because this has not been done, five members are not properly qualified for service on the Commission.

RECOMMENDATION

THE RESIDENTIAL HOME BUILDERS COMMISSION SHOULD ENSURE THAT ALL COMMISSION MEMBERS HAVE FILED AN OATH OF OFFICE AS REQUIRED BY LAW.

Minority Business Plans

The Commission has not prepared minority business plans for submission to the Small and Minority Business Assistance Office, as required by the South Carolina Consolidated Procurement Code. When agencies do not comply with the law's provisions, businesses owned and operated by minorities may not be afforded the opportunity to fully participate in the state's procurement process.

RECOMMENDATION

THE RESIDENTIAL HOME BUILDERS COMMISSION SHOULD COMPLY WITH STATE MINORITY BUSINESS PROCUREMENT LAWS.

Inconsistent Statute

A conflict exists within §40-59-90 of the South Carolina Code of Laws dealing with the revocation and reissuing of home builders' licenses. The section states that a builder's license may be revoked by majority vote, which is four members of the seven-member Commission. It also states that a revoked license may be reissued by a vote of three or more Commissioners. This could result in a license being revoked by four votes and then reinstated by three votes, at the same Commission meeting.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER CLARIFYING §40-59-90 OF THE SOUTH CAROLINA CODE OF LAWS GOVERNING THE REVOCATION AND REISSUING OF RESIDENTIAL HOME BUILDER'S LICENSES.

APPENDICES

APPENDIX A

RESIDENTIAL HOME BUILDERS COMMISSION

SCHEDULE OF FEES

	<u>Fees</u>
Examination	\$100
Retake Exam	100
Special Exam	200
License	80
License Renewal	80
Late Renewal	25
Transfer/Other Charges	25

Source: South Carolina Residential Home
Builders Commission, as of FY 87-88.

APPENDIX B



DIRECTOR
JOHN T. WATKINS
CHAIRMAN
LEVIS GILSTRAP
VICE-CHAIRMAN
R.D. WALKER

OFFICE OF THE DIRECTOR

COMMISSIONERS
J. ALLEN BRODIE
MICHAEL J. BURKETT
MARION GANDY
CLARENCE W. HOGAN
ROBERT ROGERS

SOUTH CAROLINA RESIDENTIAL HOME BUILDERS COMMISSION

2221 DEVINE STREET SUITE 530
COLUMBIA, S.C. 29205

TELEPHONE 734-9174

June 21, 1988

Mr. George L. Schroeder
Director Legislative Audit Council
620 NCNB Tower
Columbia, SC 29201

Dear Mr. Schroeder:

The Director of the South Carolina Residential Home Builders Commission concur with the report of the audit and especially the audit's staff that conducted the audit. They were professionals in every aspect of their work, courteous, polite and efficient.

In defense of the agency I would like to make a few comments on the audit.

1. Exam Statistics

Normal record keeping of builders passing the exam after the third (3) time due to the statistical form we used. The form only has spaces for the third (3) exam. However, in the future with all exams on the computer we just purchased in the last year we will be able to keep a accurate record of all exams.

2. Aministration of Complaint Files

The complaints that were closed out administratively was of a minor nature where the builder would call in and state the work was completed. The investigator would call the homeowner and see if they were satisfied with the work and if they were satisfied the complaint was closed out administratively in order to save another inspection. With only four (4) investigators for the entire state and by statute we are required to close a complaint in ninety (90) days of receipt of the complaint. In the future a standard form of inspections and reasons why the complaint was closed will be used in each complaint file.

Mr. George L. Schroeder
June 21, 1988
Page Two


3. Written Procedures

There are several reasons for not referring every complaint of unlicensed builders to the Attorney General's Office. When the work was over Ten Thousand Dollars (\$10,000.00) in the past years some members of the Attorney General's staff that have represented this agency told me to investigate the complaint and see if there was enough evidence to go to the grand jury and get a true bill. Some complaints we could determine from reading them that we had no authority over, however, in the future all such complaints will be forwarded to the Attorney General's Office for their decision. This will increase their work load considerably just to tell the complainant that they can not enter in private litigation.

4. All the recommendations will be in place by July 1, 1988 and with the automation of all functions of the agency we will be able to keep better records of all activities required by statute.

Again let me say it was a pleasure working with your staff.

Sincerely,



John T. Watkins
Director

JTW/cd

BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	141
<u>BACKGROUND</u>	142
<u>SUNSET ISSUES AND FINDINGS</u>	144
(1) EFFECTS OF REGULATION.....	144
(2) IMPACTS OF DEREGULATION.....	144
(3) ADMINISTRATIVE COSTS.....	145
(4) EFFICIENCY OF ADMINISTRATION.....	146
Biennial Licensure.....	146
Written Administrative Procedures.....	148
Exam Not Revised.....	148
(5) PUBLIC PARTICIPATION.....	149
Public Membership on the Board.....	149
Board Membership.....	150
(6) DUPLICATION OF SERVICES.....	152
Licensure of Well Drilling Contractors.....	152
(7) HANDLING OF COMPLAINTS.....	153
(8) COMPLIANCE WITH THE LAW.....	154
Reapplying for Exam.....	155
Minority Business Letters of Intent.....	155
<u>APPENDICES</u>	157
A - Schedule of Fees.....	158
B - Memorandum to the File.....	159
C - Board Comments.....	161

INTRODUCTION

After reviewing the laws and operations of the Board of Certification of Environmental Systems Operators, the Legislative Audit Council concludes that the Board should be continued. Termination of regulation would pose a threat to public health, safety and welfare. However, the Board can improve its efficiency by adopting written policies and procedures and a biennial licensing schedule. In addition, the statutes governing Board membership need to be studied.

BACKGROUND

In 1966, the General Assembly established the Board of Certification of Public Water Treatment Plant Operators to administer a certification program for this profession. The Board's authority was increased in 1969 and 1972 to include the regulation of wastewater operators and percolation test technicians. The Board's name was also changed to the Board of Certification of Environmental Systems Operators. In 1982, the Board was authorized to provide for certification of well drillers.

A water and wastewater operator is an individual employed in a public water or wastewater treatment plant who determines the chemical quality of water, alters the characteristics of water, or regulates changes in water quality. A well driller is an individual directly responsible for constructing wells at well sites. A percolation test technician determines if sites are suitable for the installation of septic tanks by testing water absorption characteristics of the soil.

The Board regulating these professions consists of 13 members appointed by the Governor with advice from organizations, agencies, and individuals. Recommendations for Board membership are made by the South Carolina Water Pollution Control Association, the Municipal Association of South Carolina, Clemson University, the Land Resources Commission, the South Carolina Board for Technical and Comprehensive Education, the Department of Health and Environmental Control (DHEC), the South Carolina Well Drillers Association, and the South Carolina Water Resources Commission. Members serve terms of four years, but may not exceed two terms.

The Board works with DHEC to ensure that water and wastewater treatment plants are operated properly. According to a 1979 Attorney General's Opinion, DHEC is responsible for classifying and monitoring the operations of water and wastewater treatment plants, while the Board is responsible for certifying

the qualifications and training required of individuals operating these plants. The Board's duties include testing and licensing, adopting rules and regulations governing the professions, and conducting investigations and hearings for alleged malpractice or misconduct by licensees.

Nationwide, 47 states have mandatory certification programs for water and wastewater plant operators. The number of states regulating well drillers or percolation test technicians could not be determined.

As of March 1988, 6,353 water and wastewater operators, 560 well drillers, and 74 percolation test technicians were licensed by the Board. All licenses issued by the Board must be renewed by June 30 each year.

SUNSET ISSUES AND FINDINGS

(1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The programs and functions of the Board of Certification of Environmental Systems Operators do not directly affect the cost of services provided by water and wastewater operators, well drillers, and percolation test technicians in the state. The Board does not regulate the fees that these licensees charge. However, the Board assesses application, examination, and annual license renewal fees. Also, each licensee must complete requirements for continuing education every three years. These costs of regulation may be passed on indirectly to the consumer, but it is not likely that they significantly affect the cost of services provided by licensees.

Also, the fees charged by members of a regulated profession may be higher than if it were unregulated. This is because regulation creates a barrier to entry into the profession and tends to limit competition through additional restrictions.

(2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The primary functions of the Board of Certification of Environmental Systems Operators are testing, licensing, and disciplining water and wastewater operators, well drillers, and percolation test technicians. Termination of the Board and deregulation of these professions would eliminate state laws which protect the quality of the state's water supply. Complete deregulation would remove education and/or examination requirements for individuals employed as water and wastewater operators, well drillers, and percolation test technicians. It

would also eliminate a mechanism for removing unqualified individuals from these professions in the state. As a result, the public would have no assurance that individuals responsible for ensuring the quality of the state's water supply are qualified to perform their duties.

Complete deregulation could result in an increase in the number of operators, well drillers, and percolation test technicians and, thus, a decrease in the cost of services provided by these individuals. However, the public could be exposed to untrained and potentially harmful operators and well drillers, affecting public health, safety and welfare. Therefore, the Audit Council recommends that the Board and regulation of the professions be continued.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Board of Certification of Environmental Systems Operators generates revenues to support its administrative costs through examination and license fees (see p. 158). From FY 82-83 through FY 86-87, the Board's expenditures increased from \$80,315 to \$155,659 (94%). During the same period, revenues increased from \$98,473 to \$159,484 (62%) (see Table 1). Revenues exceeded expenditures by an average of \$7,887 a year, and excess revenues were retained in the state's General Fund.

The Board has five permanent staff members. The increase in expenditures during this five-year period was due, in part, to the addition of two administrative specialists. In FY 86-87, personal services and fringe benefits accounted for 68% of total expenditures, while other operating expenses accounted for 32%.

TABLE 1
BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS
SOURCE OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>
License/Examination Fees	\$98,473	\$106,347	\$117,863	\$147,578	\$159,484
TOTAL Revenues	<u>\$98,473</u>	<u>\$106,347</u>	<u>\$117,863</u>	<u>\$147,578</u>	<u>\$159,484</u>
<u>Expenditures</u>					
Personal Services	\$52,624	\$ 66,612	\$ 65,424	\$ 79,464	\$ 87,766
Other Operating Expenses	18,279	28,451	31,241	41,627	49,629
Employee Benefits	<u>9,412</u>	<u>12,343</u>	<u>12,849</u>	<u>16,323</u>	<u>18,264</u>
TOTAL Expenditures	<u>\$80,315</u>	<u>\$107,406</u>	<u>\$109,514</u>	<u>\$137,414</u>	<u>\$155,659</u>

Source: South Carolina Budget and Control Board Budget Documents, FY 82-83 through FY 86-87, and the Comptroller General's Office.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Since the Audit Council's 1982 review, the Board of Certification of Environmental Systems Operators has made efforts to conduct its operations more efficiently. The Board has implemented a continuing education program for water and wastewater operators. Also, the Board has begun using the Association of Boards of Certification (ABC) exam for water and wastewater operators. Guidelines set forth by the ABC regarding exam procedures ensure security and consistency of the test administration.

However, Board efficiency could be improved by adopting biennial licensure and written administrative procedures and updating the well driller's exam annually. These areas are discussed below.

Biennial Licensure

The Board of Certification of Environmental Systems Operators could realize significant savings by changing from an

annual to a biennial licensing schedule. Savings to the state would amount to approximately \$12,000 over two years.

Section 40-23-80 of the South Carolina Code of Laws requires annual renewal of licenses by the Board. Licenses expire on June 30 each year. Therefore, the Board's clerical work peaks from June through September, when four Board employees spend approximately 75% of their time on license renewals.

Florida and Georgia renew licenses of operators biennially. South Carolina Board officials expressed concern about the loss of contact with licensees and the increase in fees associated with paying renewals for two years instead of one. However, the Audit Council could find no evidence that a biennial licensing schedule would harm the public.

Table 2 shows estimated savings associated with biennial licensing. Approximately \$9,900 (80%) would accrue from the extra revenue collected in license fees earning interest for 12 additional months. Also, biennial licensing would eliminate the need every other year for four staff members to spend approximately four months processing license renewals.

TABLE 2

PROJECTED SAVINGS/REVENUES FROM BIENNIAL LICENSING

Reduction in Mailing Costs	\$ 1,110
Reduction in Cost of Supplies	1,025
Revenue from Interest	<u>9,925</u>
TOTAL Savings/Revenues	<u>\$12,060</u>

Source: Board of Certification of Environmental Systems Operators, based on FY 86-87 data.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-23-80 OF THE SOUTH CAROLINA CODE OF LAWS TO ALLOW THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS TO ISSUE LICENSES EVERY OTHER YEAR.

Written Administrative Procedures

The Board of Certification of Environmental Systems Operators has not adopted written policies and procedures on Board operations. Section 1-23-140 of the South Carolina Code of Laws, the Administrative Procedures Act, requires that all state agencies adopt and make available to the public a written policy statement of all formal and informal procedures.

Written procedures provide a system of operating controls and are generally accepted as a good management practice. The absence of guidelines and procedures for conducting board meetings and investigations and for enforcing Board statutes can result in inconsistent agency management. In addition, without written procedures, the Board could violate the constitutional guarantee of equal protection under the law.

RECOMMENDATION

THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS SHOULD ADOPT A POLICIES AND PROCEDURES MANUAL.

Exam Not Revised

The Board of Certification of Environmental Systems Operators has not revised and updated questions for the certification exam for well drillers since 1984. The Board administers a national exam for each certification level for water, wastewater, and physical/chemical plant operators. The well driller exam used by the Board was developed from guidelines offered by the National Water Well Association and was modified to the state's requirements in 1984 by DHEC officials and Board

members. However, the exam has not been revised and updated since the modifications were made.

Officials with two professional testing services for occupational licensing recommend revising and updating exams at least annually. This keeps exams current with changes in the professions and prevents questions from being anticipated by applicants. When exams are not revised and updated periodically, the integrity of the exam cannot be ensured.

RECOMMENDATION

THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS SHOULD REVISE AND UPDATE QUESTIONS FOR THE CERTIFICATION EXAM FOR WELL DRILLERS ANNUALLY.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

To encourage public participation, the Board of Certification of Environmental Systems Operators conducts meetings at least six times a year. These meetings are announced through written advertisements in professional journals and through the news media. Public input in Board activities could be improved if a public member were appointed to the Board. Further, other issues concerning the Board's membership need to be reviewed.

Public Membership on the Board

The Board of Certification of Environmental Systems Operators does not have adequate public representation. Section 40-23-20 of the South Carolina Code of Laws provides for a 13-member board. However, no position has been designated for selection from the general public.

Public members are appointed to regulatory boards to ensure public input in board activities and provide an additional

perspective in board decision making. Both Georgia and North Carolina have public members serving on their certification boards for water and/or wastewater operators. Without public representation, public participation in policy making is limited.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §40-23-20 OF THE SOUTH CAROLINA CODE OF LAWS TO PROVIDE FOR A PUBLIC MEMBER ON THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS.¹

Board Membership

Several issues regarding Board membership need review. By law, the Board of Certification of Environmental System Operators has 13 members, all of whom are appointed by the Governor with advice from organizations, agencies, or individuals. These Board members may not adequately represent all points of view of the professions.

1. The Water and Pollution Control Association is the only organization of water and wastewater operators authorized by law to recommend members to the Board. The association primarily represents the interests of wastewater operators who work for large municipalities and industry. The South Carolina Rural Water Association and the South Carolina Section of the American Water Works Association (AWWA) are other organizations of water and wastewater operators that may offer different viewpoints to the Board. The Rural Water Association is composed of members from rural water districts and small communities and works with water operators employed by small public and private water systems. The South Carolina Section of the AWWA is composed primarily of water utilities, water operators, and others interested in the waterworks industry. However, these

¹In June 1988, the Governor signed into law Act 621 providing for one member at large to be appointed to the Board.

organizations do not have the opportunity to recommend industry members to the Board.²

2. Clemson University is required to recommend for Board membership two faculty members engaged in waterworks and wastewater instruction. However, since 1984, the University has not been actively involved in training water and wastewater operators. According to Board officials, training is now performed primarily at technical schools, not at colleges and universities. Therefore, Clemson faculty Board members may no longer provide representative input in Board decision making.

3. The Land Resources Commission recommends one individual for Board membership to represent the interests of percolation test technicians. According to a Department of Health and Environmental Control (DHEC) official, interest in this profession has decreased since about 1984 when DHEC discontinued requiring percolation tests for septic tank sites. As a result, only 74 (1%) of the approximately 7,000 licensees were percolation test technicians, as of March 1988. Board records also indicate that only three individuals have applied for certification since 1983. Therefore, a Board member representing the interests of this profession may not be necessary to the Board's operations.

Unless Board members represent all points of view of the regulated professions, input in Board decision making may be limited.

RECOMMENDATION

THE STATE REORGANIZATION COMMISSION SHOULD STUDY THE MEMBERSHIP OF THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS TO ENSURE THAT THE POINTS OF VIEW OF THE REGULATED PROFESSIONS ARE ADEQUATELY REPRESENTED.

²Act 621 of 1988 amended Board membership to include an individual to be recommended by the membership of South Carolina Section of the American Water Works Association.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Board of Certification of Environmental Systems Operators does not duplicate the services, functions, or programs of other federal or local agencies. However, some duplication of responsibilities exists between the Board of Certification and the Licensing Board for Contractors. Well drillers who undertake projects valued at \$30,000 or more are licensed by both boards.

Licensure of Well Drilling Contractors

Well drilling contractors are required to obtain licenses from two agencies to undertake projects valued at \$30,000 or more. Under Act 459 of 1982 (\$40-23-10 et seq. of the South Carolina Code of Laws), all well drillers are required to be licensed by the Board of Certification of Environmental Systems Operators. The Licensing Board for Contractors requires a separate license for well drillers who undertake projects valued at \$30,000 or more. The Board of Certification requires a technical competency exam and the Contractors Board requires a general exam. Both boards review the experience of applicants, handle complaints, and can revoke licenses. As of March 1988, ten well drillers had general contractors' licenses.

The administration of the well drillers' licensing program by two agencies is inefficient and results in additional administrative costs to the state. Requiring two licenses for general contractors in well drilling also results in their completing two application forms, paying two license fees and passing two exams. These general contractors must pay \$40 for a well driller's certificate and \$110 annually for the general contractor's license.

Government regulation should protect the public without significantly increasing costs to the regulated industry.

Provisions under the law should also ensure the efficient administration of regulatory requirements for all contractors. The Board of Certification is responsible for certifying the qualifications of well drillers. Therefore, its requirements should be sufficient to regulate all well drillers.

Two licenses are now required in this specialty because the contractors' law was not changed when Act 459 of 1982 was passed, and Act 459 did not exempt well drillers from licensure as general contractors. A Contractors Board official stated that the Board would have no objection to well drillers being regulated by another agency.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER EXEMPTING WELL DRILLERS FROM REGULATION BY THE LICENSING BOARD FOR CONTRACTORS.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS, FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW, HAVE BEEN PROCESSED.

An Attorney General's Opinion in 1979 distinguished the responsibilities of the Board of Certification of Environmental Systems Operators and the Department of Health and Environmental Control (DHEC) for handling complaints. According to the opinion, the Board is responsible for investigating complaints involving the failure of a certified operator or well driller to use reasonable care, judgement, and knowledge in performing his duties. DHEC is responsible for investigating complaints concerning well construction and operation of water and wastewater treatment plants. DHEC often refers findings of its investigations to the Board to determine if action should be taken against the well driller or operator.

The Audit Council found that the Board has generally handled complaints in an efficient and consistent manner. From FY 82-83 through FY 86-87, the Board handled six complaints against certified operators and well drillers. Four complaints were referred to the Board by DHEC and two were initiated by the Board. Of the six complaints, four resulted in license suspensions.

For each complaint, a file is maintained documenting the allegations of the complainant, the results of Board and DHEC investigations, and the disposition of the case. However, one complaint file did not have adequate documentation of the Board's investigation and resolution of the case. The Board should ensure that all complaint files contain adequate documentation to permit a complete review of Board actions.

According to the Director, the Board does not have adequate staff to conduct investigations and prepare reports for the Director and Board members. The lack of staff has required that Board members investigate some complaints. However, in its FY 88-89 budget request, the Board requested authorization to contract as needed with a qualified part-time investigator.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Board of Certification of Environmental Systems Operators was created and is governed by state laws and regulations. Federal and local statutes and regulations do not directly address the Board. As noted on page 148, the Board has not complied with state law requiring written administrative procedures. In addition, the Board has not required applicants who fail exams by more than ten points to wait six months before are applying to take the exam nor submitted letters of intent regarding purchases from minority businesses.

Reapplying for Exam

The Board of Certification of Environmental Systems Operators does not require individuals who fail an exam by more than ten points to wait six months before applying to retake the exam, as required by law. According to Board officials, all individuals who fail an exam are allowed to apply to retake the exam three months later.

Regulation 51-6 requires an applicant who fails an exam by up to ten points to wait three months before applying to retake the exam. An applicant who fails by more than ten points must wait at least six months before reapplying. However, if he successfully completes an approved training course, the applicant may reapply in three months.

According to a Board official, the intent of the regulation is to provide an incentive for examinees to better prepare for the exams. However, they have stated that the six-month waiting period is not enforced because of difficulty in monitoring training courses which, when completed, would enable the applicant to retake the exam after three months.

RECOMMENDATION

THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS SHOULD MONITOR SCORES OF ALL INDIVIDUALS WHO FAIL EXAMS AND DETERMINE IF THE PORTION OF REGULATION 51-6 REQUIRING INDIVIDUALS WHO FAIL EXAMS BY MORE THAN TEN POINTS TO WAIT SIX MONTHS BEFORE REAPPLYING TO TAKE THE EXAM IS NECESSARY.

Minority Business Letters of Intent

The Board of Certification of Environmental Systems Operators has not filed a letter of intent with the Office of Small and Minority Business Assistance (OSMBA) concerning purchases with minority businesses. The letter of intent commits 10% of the agency's controllable funds to minority businesses.

OSMBA was established to assist state agencies in carrying out the intent of the South Carolina Consolidated Procurement Code. This law's purpose is to ensure that minority businesses have access to the state government procurement process. Because the Board has not complied with these provisions, businesses owned and operated by minorities may not be afforded the opportunity to fully participate in the state's procurement process.

RECOMMENDATION

THE BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS SHOULD COMPLY WITH STATE MINORITY BUSINESS PROCUREMENT LAWS AND SUBMIT REQUIRED LETTERS OF INTENT TO THE OFFICE OF SMALL AND MINORITY BUSINESS ASSISTANCE.

APPENDICES

APPENDIX A

BOARD OF CERTIFICATION OF ENVIRONMENTAL SYSTEMS OPERATORS

SCHEDULE OF FEES

Water and Wastewater Operator	<u>Fees</u>
Application	\$ 22
Examination	22
License Renewal	18
 Percolation Test Technician	
Application (Includes Examination)	\$ 48
License Renewal	30
 Well Driller	
Application (Includes Examination)	\$ 40
License Renewal	25

Source: South Carolina Board of Certification of
Environmental Systems Operators,
as of March 1988.



LEGISLATIVE AUDIT COUNCIL

STATE OF SOUTH CAROLINA

620 NCNB TOWER
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE
803-734-1320

May 25, 1988

PUBLIC MEMBERS

ROBERT S. SMALL, JR.
Chairman
SHERRI D. MATHEWS
ROBERT L. THOMPSON, JR.

MEMORANDUM TO THE FILE

Eliminating the Board of Certification of
Environmental Systems Operators and Moving Its
Functions to DHEC

EX-OFFICIO MEMBERS

SENATE

NICK A. THEODORE
Lt. Governor
Pres. - Senate
MARSHALL B. WILLIAMS
Chm. - Judiciary Comm.
JAMES M. WADDELL, JR.
Pres. Pro Tempore
Chm. - Finance Comm.

The audit staff has reviewed the issue regarding placement of the functions of the Board of Certification of Environmental Systems Operators within the Department of Health and Environmental Control (DHEC). In our review, we interviewed DHEC's Deputy Commissioner for Environmental Quality Control and the Bureau Chief for Water Pollution Control, as well as the Board of Certification's Director. Our conclusion from this review is that the Board's functions should remain independent of DHEC, and the Board should be continued for the following reasons.

HOUSE

ROBERT J. SHEHEEN
Speaker of House
ROBERT N. MCLELLAN
Chm. - Ways & Means Comm.
DAVID H. WILKINS
Chm. - Judiciary Comm.

- 1 According to DHEC officials, if the Board were eliminated and its functions placed within that agency, a separate review panel of DHEC officials would have to be created to resolve issues involving licensing, testing, and complaints. There are several reasons why this would be necessary. The materiality of these issues is often too minor to involve the DHEC Board. Specific expertise relating to the professions is needed to evaluate and resolve issues of these types. This expertise may not be available on the DHEC Board. The creation of a review panel would result in an additional layer of bureaucracy for regulating the professions. This could cause a delay in processing license applications and handling complaints.

GEORGE L. SCHROEDER
Director

MEMORANDUM

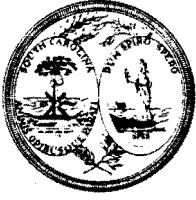
May 25, 1988

Page 2

- 2 Even if a review panel were created within DHEC, the level of expertise would be limited to the regulator's point of view and would not include the wide ranging viewpoints currently on the Board of Certification. For example, the review panel would not include individuals involved in education and training or employed as water and wastewater operators, well drillers or percolation test technicians.
- 3 Currently, DHEC regulates the operation of water and wastewater plants, while the Board of Certification regulates the qualifications of the operators of these plants. When a violation is found with the operation of a plant, DHEC notifies the Board so the Board can determine if the violation indicates misconduct by the operator and warrants disciplinary action. If the Board's functions were placed with DHEC, then DHEC could close a plant for violations and use these violations as reason for revoking an operator's license. This would eliminate an independent appeals process for the operator.
- 4 According to Board and DHEC officials, cost savings from placing the Board's functions with DHEC would be minimal. DHEC cannot absorb these functions with its current staff and would have to take on the Board's staff to continue the licensing functions. Therefore, no savings in personnel would result. Further, the Board's offices were previously housed at DHEC and had to be moved when DHEC no longer had unoccupied space available. DHEC officials state they could not now accommodate the Board's staff.

To conclude, we feel that the loss in services to consumers and the professions which would result from placing the Board's functions in DHEC would not be offset by the small cost savings from consolidating the services. Therefore, we cannot justify recommending that the Board of Certification be eliminated and its functions placed within DHEC.

/cp



State of South Carolina

OFFICE OF
BOARD OF CERTIFICATION OF ENVIRONMENTAL
SYSTEMS OPERATORS

PHONE 734-9140

2221 DEVINE STREET, SUITE 320
COLUMBIA, SC 29205

June 22, 1988

Mr. George L. Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The Board is grateful to you and the staff of the Legislative Audit Council for the opportunity to review the draft of your report on the Sunset Review of our agency.

The Board agrees that additional written procedures governing Board meetings would be useful and will develop such procedures. Work is progressing on the revising of the well driller examinations and a new series of examinations is expected to be developed. With regard to reapplying for examinations and the Rules and Regulations governing reapplication the Board intends to review this issue and others and expects to submit that and other changes to the Legislature. Also, the Board will develop and submit to the office of Small and Minority Business Assistance a letter of intent governing controllable funds.

On the issue of biennial licensure, the annual savings from such a change appears to be over stated and it is very likely that individuals licensed by this Board would object strongly to such a change. Operator turnover would result in the payment of renewal fees for periods for which individuals are out of the licensed profession. Additionally biennial licensing restricts the Board's ability to provide accurate and effective budgets and to ensure that revenue requirements imposed on the agency are met. The Board opposes biennial licensing.

Your report has been prepared after a careful and detailed review of our agency and we are grateful for your assistance and suggestions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm. R. Moore".

William R. Moore
Director

WRM/thg

cc: John Andrea

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

TABLE OF CONTENTS

	<u>Page</u>
<u>INTRODUCTION</u>	164
<u>BACKGROUND</u>	165
<u>SUNSET ISSUES AND FINDINGS</u>	168
(1) EFFECTS OF REGULATION.....	168
(2) IMPACTS OF DEREGULATION.....	168
(3) ADMINISTRATIVE COSTS.....	169
(4) EFFICIENCY OF ADMINISTRATION.....	171
Tests Do Not Meet Professional Standards.....	172
Biennial Licensure.....	173
Annual Roster.....	174
(5) PUBLIC PARTICIPATION.....	175
(6) DUPLICATION OF SERVICES.....	175
(7) HANDLING OF COMPLAINTS.....	176
(8) COMPLIANCE WITH LAW.....	177
<u>APPENDICES</u>	178
A - Comparison of the Basic Licensure Requirements for Land Surveyors in Nine Southeastern States.....	179
B - Basic Licensure Requirements for Professional Engineers and Land Surveyors in South Carolina.....	180
C - Schedule of Fees.....	181
D - Pass/Fail Ratio Schedule of Examinations, October 1984 Through October 1987.....	182
E - Agency Comments.....	183

INTRODUCTION

After reviewing the laws and operations of the Board of Registration for Engineers and Land Surveyors, the Legislative Audit Council concludes that there is a public need for the regulation of engineers and land surveyors, and that the Board should be continued. The Board has operated efficiently and effectively; however, the preparation of Board exams for land surveyors could be improved.

BACKGROUND

The State Board of Registration for Professional Engineers and Land Surveyors was created in 1922. The Board is responsible for evaluating, testing, certifying, and disciplining professional engineers and land surveyors. In June 1987, there were 7,155 professional engineers, 9,078 engineers-in-training, 695 land surveyors, 246 land surveyors-in-training, and 263 individuals were registered as both engineers and land surveyors.

The Governor appoints the eight board members for five-year terms. The Board is composed of five registered engineers, two registered land surveyors, and a public member. Act 116 of 1983 added the second land surveyor and the public member to the Board as recommended in the Audit Council's 1982 Sunset Review.

The practice of engineering is defined by §40-21-10 of the South Carolina Code of Laws as:

. . . any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to professional services or creative work as consultation, investigation, evaluation, planning, design, and observation of construction for the purpose of assuring compliance with specifications and design in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

The practice of land surveying includes but is not limited to:

. . . layout of proposed improvements, including land development plans, site plans, subdivision plans, profiles, typical sections, and cross sections for streets; measurements for and preparation of plans showing existing improvements after construction, including condominium plot plans; measurements for and preparation of topographic maps and surveys; and the preparation of descriptions and plans for use in legal instruments of conveyance of real property and property rights.

TIER B licensure for land surveyors was added in May 1986. In addition to the practices listed above, TIER B land surveyors may ". . . prepare and furnish subdivision plans for sedimentation

and erosion control and storm drainage systems. . . ." According to the Board's Executive Director, TIER B licensure was established to ensure that these land surveyors are appropriately educated and qualified for the additional responsibilities.

Licensure Requirements

The Audit Council surveyed the entry requirements for engineers in South Carolina and eight other southeastern states and found the same basic licensure requirements. Although experience requirements for land surveyors range from one to four years among these states, South Carolina's requirement of two years is average (see Appendix A). The basic licensure requirements for engineers and land surveyors in South Carolina are summarized in Appendix B.

In addition to the requirements discussed above, engineers and land surveyors must be of "good character and reputation." In its 1982 review, the Audit Council recommended that §40-21-220 of the South Carolina Code of Laws be amended to define these terms. This has not yet been done, but according to the Board's Executive Director, regulations will be established for definitions of these terms.

The Audit Council's 1982 review recommended the elimination of the exemption for engineers who work for public service companies and utilities. The exemption was eliminated by Act 116 of 1983. However in 1984, exemptions for public utility workers were reinstated. In 1985, an exemption was added for regular employees of a state authority which sells and distributes electric power to consumers and is licensed by and subject to safety regulations of the Federal Energy Regulatory Commission.

Reciprocity

The Board offers reciprocity (comity) for land surveyors and engineers licensed in other states. Engineers must meet the educational requirements and must have passed the National Council of Engineering Examiners (NCEE) exam. NCEE is a

nonprofit organization, with membership from the Boards for Engineers and Land Surveyors of all 50 states (with exception of two state boards for land surveyors).

The Board may waive the NCEE written examination requirements for engineers who are registered in another state, have more than 25 years of eminently qualifying experience, and pass an oral examination. Since 1986, questions asked an applicant during an oral examination have been recorded in the Board's minutes. Reciprocal licensure for land surveyors is provided for those who meet the educational and work experience requirements and pass the state exam for land surveyors.

Temporary Permits

Temporary permits may be obtained for both professional engineers and land surveyors. These permits are issued for one project and can last no more than one year. Only one temporary permit can be granted per year. In FY 86-87, temporary permits were issued to 2 land surveyors and 54 professional engineers.

SUNSET ISSUES AND FINDINGS

(1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Board for Engineers and Land Surveyors has no direct control over the prices charged by professional engineers or land surveyors for their services. The Board does impose regulation costs on engineers and land surveyors through application, examination, and licensure renewal fees (see Table 1). It is not likely that these fees significantly affect the price of services. Appendix C includes the fee schedule.

(2) DETERMINE THE ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The professions of engineering and land surveying are licensed in all states. Deregulation would eliminate entry requirements which help ensure that professionals are qualified to provide their services. In the absence of regulation, unqualified persons may engage in engineering or land surveying, posing a risk to public safety and welfare. For example, an unqualified person engaging in engineering could provide inadequate plans and specifications for a building, such as a hotel or mall, which could result in a building not being structurally sound. An improper survey could result in an individual constructing a home on someone else's property. Deregulation would also eliminate the disciplinary mechanism for suspending, revoking, or fining an unqualified professional engineer or land surveyor.

If deregulated, the price for these services could decrease due to increased competition, but the public health, safety, and welfare would be threatened. Therefore, the Audit Council

recommends that regulation of engineers and land surveyors be continued.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

To support its administrative costs, the Board collects revenue through fees for examinations, applications, certificates, and temporary permits (see Table 1). From FY 82-83 through FY 86-87, the Board's expenditures increased 42% from \$197,184 to \$280,446. Revenues collected by the Board increased 39% from \$215,904 to \$299,925, and staff increased from 5.8 to 6.5 full-time equivalent employees.

TABLE 1
PROFESSIONAL ENGINEERS AND LAND SURVEYORS
SOURCE OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>	<u>FY 85-86</u>	<u>FY 86-87</u>
Licensure Fees	\$163,500	\$152,043	\$164,661	\$181,863	\$227,370
Examination Fees	7,675	9,260	20,705	22,940	31,610
Application Fees	41,965	48,290	42,150	44,360	34,370
Sale of Publications and Brochures	110	4,525	220	140	235
Sale of Documents	2,645	140	4,920	5,810	6,285
Sale of Listings and Labels	-	-	-	-	50
Miscellaneous	9	25	15	148	5
TOTAL Revenues	\$215,904	\$214,283	\$232,671	\$255,261	\$299,925
<u>Expenditures</u>					
Personal Services	\$ 98,641	\$ 92,981	\$106,918	\$127,410	\$135,484
Other Operating Expenses	81,893	87,242	103,799	96,248	120,344
Employee Benefits	16,650	16,002	18,302	24,020	24,618
TOTAL Expenditures	\$197,184	\$196,225	\$229,019	\$247,678	\$280,446
Full-Time Equivalent Positions	(5.80)	(5.80)	(6.00)	(6.00)	(6.50)
<u>Source of Funds</u>					
Balance from Prior Year	\$ -	\$ -	\$ 6,782	\$ -	\$ -
General Fund Appropriation	185,923	210,554	225,220	252,872	279,711
Supplemental Appropriation	-	6,782	-	-	-
Transfers from Civil Contingent Fund	12,838	-	-	-	-
Lapsed	(1,577)	(14,329)	(2,983)	(137)	(15)
Carried Forward	-	(6,782)	-	-	-
Other	-	-	-	(5,057)	750
TOTAL	\$197,184	\$196,225	\$229,019	\$247,678	\$280,446
<u>Number of Licensees</u>					
Professional Engineers	6,140	6,311	7,061	6,724	7,155
Engineers-In-Training	7,231	7,596	8,117	8,605	9,078
Land Surveyors	924	900	994	886	695
Land Surveyor-In-Training	147	166	193	214	246
Professional Engineer/Land Surveyor ¹	-	-	-	-	263

¹Dual license first reported in the FY 86-87 Annual Report.

Source: South Carolina Budget and Control Board Budget Documents, FY 83-84 through FY 87-88 and annual reports FY 82-83 through FY 86-87.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Board for Engineers and Land Surveyors has operated in an efficient manner. During FY 86-87, the Board received 1,373 applications and rejected 45. Licenses were granted to 145 professional engineers and 14 land surveyors. Additionally, certificates for 446 engineers-in-training and 32 land surveyors-in-training were issued by the Board.

The Board has implemented corrective measures recommended in 1982 by the Audit Council report. However, not all recommendations have been incorporated (see Table 2). In addition, the implementation of biennial licensure could result in savings for the state.

TABLE 2
REVIEW OF AUDIT COUNCIL RECOMMENDATIONS
FROM 1982 SUNSET REVIEW AND BOARD ACTION

<u>Recommendation</u>	<u>Board Action</u>
Establish a policies and procedures manual.	Manual established.
Sanctions for late renewal.	Implemented in 1983.
Amend Regulation 49-9 to limit time a license may be renewed when a registrant does not practice.	No change.
Establish written policies for the development of the state exam.	Policy adopted on April 25, 1988.
Amend Regulation 49-8 to better reflect the passing score of the engineering exams.	No change.

The Board uses nationally prepared exams where available. However, a Board-prepared exam is used to test applicants on South Carolina laws and requirements (LS, Part IV-B). Also, since there is no national exam for TIER B licensure, the Board appointed a committee of professionals to prepare an examination.

Appendix D provides a pass/fail schedule for all exams administered by the Board from October 1984 to October 1987.

Tests Do Not Meet Professional Standards

The State (LS, Part IV-B) and TIER B Exams for land surveyors have not met professional testing standards. During the exam development, neither task analysis nor pretesting of questions was performed to ensure that questions were valid. Also, the Board has not established standards necessary to ensure consistency from one exam to the next.

Questions for the State Exam have been drawn from a "bank," such that exams administered on different testing dates contain varying numbers of true/false questions, multiple choice questions, and short answer questions. In addition, the Audit Council noted several instances where the same exam question was weighted differently from exam to exam. For example, in one exam drawing a plat was weighted at 25 points, and in another exam it was weighted at 15 points.

Professional testing standards include (but are not limited to) use of three important procedures:

- Exams should be based on formal job analysis, which describes each important job function and responsibility.
- Test specifications should be used, which tie each test item to tasks identified in the job analysis.
- Validity and reliability of exam questions should be established, which includes pretesting and revising of questions.

For the six exams administered by the Board between October 1984 and April 1987, the passing rate ranged between 39% and 93%. When exams do not meet professional testing standards, there is little assurance that they are fair to applicants or legally defensible, if challenged.

RECOMMENDATION

THE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS SHOULD ENSURE THAT THE LAND SURVEYOR EXAM PART IV-B AND THE TIER B EXAM MEET PROFESSIONAL TESTING STANDARDS AND ARE CONSISTENT AND FAIR TO APPLICANTS.

Biennial Licensure

Significant savings could be realized by changing from the current annual relicensing schedule to biennial licensing. Based on FY 86-87 renewal fees the state could have saved approximately \$28,114 if biennial licensing had been in effect (see Table 3).

TABLE 3

SAVINGS THROUGH BIENNIAL LICENSING OF
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Decreased Supply Costs	\$ 1,053
Decreased Mailing Costs	3,187
Additional Interest Revenue ¹	<u>23,874</u>
TOTAL	<u>\$28,114</u>

¹Based on \$227,370 invested by the State Treasurer's Office at the average annual interest rate of 10.5% received in FY 86-87.

Source: South Carolina Board of Registration for Professional Engineers and Land Surveyors, State Budget for FY 86-87.

Annual licensing is required by §40-21-330 of the South Carolina Code of Laws. Since licenses expire July 1, renewal applications are mailed May 1 and are due on June 30. A late fee is charged after July 31. Therefore, clerical work peaks between May and July. During this time, one staff person spends almost 100% of her time on license renewals. Between May and June, two

additional staff persons spend almost 100% and 50%, respectively, of their time on license renewals.

According to a survey conducted by the National Council of Engineering Examiners in 1982, 18 states license less frequently than annually. The Audit Council surveyed nine southeastern states, including South Carolina, and found that four (Florida, Georgia, Louisiana, and Virginia) require biennial licensure.

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING
§40-21-330 OF THE SOUTH CAROLINA CODE OF LAWS TO ALLOW
THE BOARD TO ISSUE LICENSES ON A BIENNIAL BASIS.

Annual Roster

The Board of Engineering and Land Surveyors publishes an annual directory of all registrants as required by §40-21-160 of the South Carolina Code of Laws. This roster is mailed to all registrants.

In FY 87-88, the Board spent \$11,215 to have the rosters printed and \$1,550 to mail them. The Board maintains an updated, computerized listing of all the state's licensed engineers and land surveyors. Therefore, interested parties could contact the Board for information on engineers and land surveyors. The Board could publish the directory of all registrants biennially and an interim directory containing new licensees and disciplinary action taken against licensees by the Board on "off years."

RECOMMENDATION

THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING
§40-21-160 OF THE SOUTH CAROLINA CODE OF LAWS TO
REQUIRE BIENNIAL PRINTING OF THE REGISTRANT ROSTER.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

To encourage public participation, state law requires that a public member serve on the Board. The Board holds meetings approximately every two months. The Board publishes a newsletter semi-annually, which is sent to all registrants, the National Council of Engineering Examiners, the state library, other licensing boards, professional societies, and other interested parties. The Executive Director of the Board stated that they would like to publish the newsletter quarterly. Also, the professional societies are notified of proposed changes to the Board's rules and regulations. The Board has held public hearings when establishing rules and regulations.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

Although the Board's duties and responsibilities do not duplicate any other state agency's functions, the Board does work closely with the Board of Architectural Examiners and the Board of Landscape Architects. The Board has a written agreement with the State Board of Architectural Examiners governing the interpretation and enforcement of the respective Boards' duties. According to the Board's Executive Director, a regulation will be established for this agreement. In addition, Board Regulation 49-19 covers an agreement with the Board of Landscape Architects to clarify the overlap between the practice of engineering and landscape engineering.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS, FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW, HAVE BEEN PROCESSED.

The Board maintains thorough documentation in a log of each complaint received. During FY 85-86 and FY 86-87, the Board received 165 complaints. Investigation of these complaints by the Board resulted in revocation of three licenses, two reprimands, and two suspensions; also, one land surveyor voluntarily relinquished his license. Cautions were issued to 53 licensees. In addition, four nonlicensed individuals were issued injunctions to stop their improper practice of land surveying.

The Audit Council's 1982 Sunset Review recommended that the Board be given the authority to impose fines upon licensees who violate Board rules and regulations. Act 437 of 1986 added provisions to §40-21-350 of the South Carolina Code of Laws allowing the Board to fine licensees. Since May 1986, the Board has fined six individuals a total of \$4,800.

The Board has developed written guidelines for the disposition of both formal and informal complaints. Also, the Board has a probable cause committee to aid investigators in determining the need for an investigation and possible disciplinary action.

In February 1988, the Board adopted a policy for the release of disciplinary action taken by the Board against registrants to newspapers, public authorities, and professional societies.

To aid in its enforcement responsibilities, the Board is working to define terms which specify grounds for disciplinary action against registrants. These terms are contained in §40-21-340 and include gross negligence, incompetency, and misconduct. Additionally, the Board is working to define direct supervision, responsibility, and direct supervisory control to ensure that unlicensed engineers and land surveyors receive

appropriate supervision. Three of nine southeastern states (Alabama, Florida, and Louisiana) have legal definitions of offenses for which the Board may take disciplinary action.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Board of Registration for Engineers and Land Surveyors is governed by the South Carolina Code of Laws. The Audit Council found no violations of Board laws during its review.

APPENDICES

APPENDIX A
COMPARISON OF BASIC LICENSURE REQUIREMENTS¹
FOR LAND SURVEYORS IN NINE SOUTHEASTERN STATES

<u>State</u>	<u>Education</u>	<u>Experience</u>	<u>Examinations</u>
Alabama	Graduate in four-year civil, mining, or surveying engineering program.	Two years	(1) Fundamentals in land surveying. (2) Principles and practice of land surveying. (3) Public domain and Alabama land surveying and history.
Florida	Graduate of four-year course of study in land surveying approved by Board.	Four years	(1) Part I - land surveying fundamentals. (2) Part II - professional practice and principles.
Georgia	Graduate of a four-year program from school approved by Board, including approved course in surveying.	Four years	(1) Fundamentals of land surveying. (2) Principles and practice of land surveying. (3) Laws of state relating to land surveying.
Louisiana	Bachelor of science degree in curriculum approved by Board, including six semester hours in land surveying courses.	Four years	(1) Fundamentals of land surveying. (2) Principles and practice of land surveying. (3) Laws, procedures, and practice of land surveying.
Mississippi	Graduation from school or college approved by Board, including approved courses in surveying.	Two years	(1) Fundamentals of land surveying. (2) Principles and practice of land surveying.
North Carolina	Bachelor of science degree in surveying approved by Board.	One year	(1) Surveying fundamentals. (2) Principles and practice of land surveying.
South Carolina Tier A	Bachelor of science degree or bachelor of engineering technology from an approved school.	Two years	(1) Fundamentals of land surveying. (2) Principles and practice of land surveying. (3) Colonial exam. (4) State exam.
Tier B	Bachelor of science degree from an approved school with 15 semester hours in surveying, mapping, and hydrology.	Two years	(1) Same as Tier A exams (1) - (4). (2) Tier B examination.
Tennessee	Four-year college degree with a major in land surveying approved by Board.	Two years	(1) State exam. (2) Principles and practice of land surveying.
Virginia 3A Land Surveyor	Bachelor of science degree in a Board-approved program emphasizing land surveying, with 20 semester hours in advance surveying and 10 in supporting courses directly related to land surveying.	Three years	(1) Fundamentals in land surveying. (2) Principles and practice of land surveying. (3) Colonial exam. (4) Virginia principles, practices, and law.
3B Land Surveyor	Licensed as 3A land surveyor.	Two years	(1) 3B examination.

¹States accept various combinations of education and experience for licensure; requirements listed are for individuals who have a bachelor's of science degree from an approved school.

Source: Code of Laws and Regulations for Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

APPENDIX B

BASIC LICENSURE REQUIREMENTS FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS
IN SOUTH CAROLINA

<u>License</u>	<u>Education</u>	<u>Experience</u>	<u>Examinations</u>
Professional Engineer	Four-year engineering degree from an approved school.	Four years in engineering work.	(1) Fundamentals of Engineering (Engineering-in-Training-EIT) (2) Principles and Practice of Engineering (PE)
(or)	Four-year engineering or related field from nonapproved school.	Eight years in engineering work.	(1) EIT (2) PE
TIER A Land Surveyor	Associate degree in engineering technology or land surveying from an approved school.	Four years under a registered land surveyor.	(1) Fundamentals of Land Surveying (Land Surveyor-in-Training-LSIT) (2) Principles and Practice of Land Surveying (LS Parts III & IV)
(or)	Bachelor of science degree or bachelor of engineering technology from an approved school.	Two years under a registered land surveyor.	(1) LSIT (2) LS Parts III & IV
TIER B Land Surveyor	Four-year bachelor of science with 15 semester hours of specified courses from an approved school. ¹	Two years under a registered land surveyor.	(1) LSIT (2) LS Parts III & IV (3) TIER B
(or)	Bachelor of engineering technology with 12 semester hours of specified courses from an approved school. ¹	Two years under a registered land surveyor.	(1) LSIT (2) LS Part III & IV (3) TIER B
(or)	TIER A surveyor licensed prior to May 1986.		(1) TIER B

¹Courses in surveying, mapping, and hydrology subject to Board approval.

APPENDIX C

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

AND LAND SURVEYORS

SCHEDULE OF FEES

	<u>Fees</u>
Application Fees	
Professional Engineer	\$50
Land Surveyor	50
Engineer-In-Training ¹	35
Engineer-In-Training ²	50
Land Surveyor-In-Training	50
Examination Fees	
Fundamental of Engineering	\$30
Principles and Practice of Engineering	55
Fundamentals of Land Surveying	30
Principles and Practice of Land Surveying	30
Colonial Exam	30
State Exam	15
Certificates	\$15
Temporary Permits	
Professional Engineers	\$50
Land Surveyor	50

¹Senior Engineering students and Accreditation Board for Engineering and Technology (ABET) graduates.

²Applicants who have foreign degrees, science-related degrees, or non-ABET Engineering degrees.

Source: South Carolina Board of Registration for Professional Engineers and Land Surveyors.

APPENDIX D

**BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS PASS/FAIL SCHEDULE OF EXAMINATIONS**

OCTOBER 1984 THROUGH OCTOBER 1987

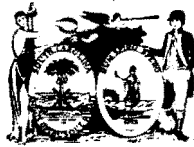
	<u>October 1984</u>	<u>April 1985</u>	<u>October 1985</u>	<u>April 1986</u>	<u>October 1986</u>	<u>April 1987</u>	<u>October 1987</u>
Principles and Practice of Engineering Exam							
Total Number of Applicants	119	111	139	115	157	135	165
Passed	56	55	76	56	64	82	93
Failed	63	56	63	59	93	53	72
Percentage Passed	47%	49%	55%	49%	41%	61%	56%
Fundamentals of Engineering Exam							
Total Number of Applicants	279	288	224	293	228	208	173
Passed	199	196	167	198	177	159	115
Failed	80	92	57	95	51	49	58
Percentage Passed	71%	68%	75%	68%	78%	76%	66%
Total Number of Applicants (Others)	132	123	93	94	109	85	102
Passed	67	62	54	51	62	49	55
Failed	65	61	39	43	47	36	47
Percentage Passed	51%	50%	58%	54%	57%	58%	54%
National Passing Averages	69%	74%	69%	74%	71%	73%	66%
Fundamentals of Land Surveying Exam							
Total Number of Applicants	22	28	28	23	28	37	27
Passed	10	18	11	10	11	21	9
Failed	12	10	17	13	17	16	18
Percentage Passed	45%	64%	39%	43%	39%	57%	33%
Principles and Practice of Land Surveying Exam							
Total Number of Applicants	13	14	24	22	17	10	24
Passed	7	8	16	18	11	7	17
Failed	6	6	8	4	6	3	7
Percentage Passed	54%	57%	67%	82%	65%	70%	71%
Colonial Exam¹							
Total Number of Applicants	-	-	-	-	-	-	29
Passed	-	-	-	-	-	-	17
Failed	-	-	-	-	-	-	12
Percentage Passed	-	-	-	-	-	-	59%
State Exam²							
Total Number of Applicants	13	14	23	30	26	14	29
Passed	9	13	9	26	21	10	27
Failed	4	1	14	4	5	4	2
Percentage Passed	69%	93%	39%	87%	81%	71%	93%
Tier B Land Surveying Exam¹							
Total Number of Applicants	-	-	-	-	-	-	38
Passed	-	-	-	-	-	-	15
Failed	-	-	-	-	-	-	23
Percentage Passed	-	-	-	-	-	-	38%

¹The Board of Registration for Engineers and Land Surveyors administered this exam for the first time in October 1987.

²Exam limited to South Carolina laws and regulations in October 1987.

Source: The South Carolina Board of Registration for Professional Engineers and Land Surveyors.

**South Carolina State Board of Registration
for Professional Engineers and Land Surveyors**



MRS. MARY M. LAW, DIRECTOR
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P.O. DRAWER 50408
COLUMBIA, SC 29250
(803) 734-9166

June 17, 1988

Mr. George Schroeder, Director
Legislative Audit Council
620 NCNB Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

We wish to express to you our appreciation for the opportunity to review the draft of your audit report of our operations. We feel the report is fair in its observations and findings.

With regard to your specific recommendations, we submit the following:

1) Regarding the four-hour State portion of the written examination for land surveyors, this Board has been concerned with its makeup, consistency and assurance that it was fair to applicants and legally defensible, if challenged. Therefore, in 1986 we requested assistance from the National Council of Engineering Examiners (NCEE). A three-hour examination was developed by NCEE based on a Task Analysis of Licensed Surveyors which was designed to assess the competence of the candidate to deal with in-depth every-day practice unique to the Colonial States and is now utilized by 16 states. NCEE also provided a test specification matrix for a one-hour State examination. The one-hour examination was designed to test the knowledge of the candidate on the Minimum Standards for the Practice of Land Surveying in South Carolina. Both examinations replaced the original four-hour examination and were administered for the first time in October 1987 and then again in April 1988. At the April 1988 Board meeting, the Agency Director was authorized to obtain the services of a consultant to prepare the one-hour examination from the questions submitted by the committee in order to assure that the examination would adequately, but fairly, test the skills and knowledge of applicants on statutory requirements and practice of land surveying. The Board, with the assistance of the consultant, will be able to establish the validity and reliability of examination questions, which will include pretesting and revising of questions.

The first-eight-hour written examination for Tier B Land Surveyors was administered in October 1987. This examination was developed by a committee of qualified individuals who had expertise in hydrology, hydraulics, and drainage design. It was designed to test the knowledge and skills of land surveyors qualified to prepare and furnish subdivision plans for sedimentation and erosion control and storm drainage systems. A qualified professor of engineering from one of the State universities was hired to prepare and grade the examination which we believe meets the professional testing standards and is consistent and fair to the applicants. We will strive to improve this examination and will work towards establishing the validity and reliability of examination questions for this examination.

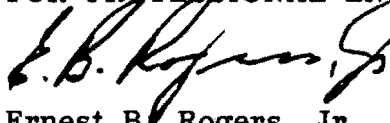
2) The Board is considering your recommendation for biennial renewal of licensure.

3) We agree with your recommendation for printing the directory of registrants biennially with an interim directory containing new licensees and disciplinary actions taken against licensees by the Board on "off" years.

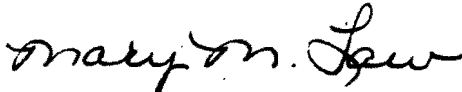
We appreciate your appraisal of our operations and your comments, and commend your audit staff. They were at all times most courteous and considerate. We assure you that constructive suggestions such as you have provided are always welcomed, and will always be given serious consideration.

Sincerely,

SOUTH CAROLINA STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS



Ernest B. Rogers, Jr., PE, Chairman



Mary M. Law, Director

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